

# **EXHIBIT 5**

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Page 1

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

- - - - - x  
IN RE: VALSARTAN, LOSARTAN, AND : MDL NO. 2875  
IRBESARTAN PRODUCTS LIABILITY :  
LITIGATION, :  
:  
THIS DOCUMENT RELATES TO :  
ALL ACTIONS :  
- - - - - x

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Veritext Virtual Zoom Videotaped  
deposition of RENA M. CONTI, Ph.D., taken on  
Thursday, February 10, 2022, in Glenside,  
Pennsylvania, commencing at 10:17 a.m. Eastern  
Standard Time, before Jamie I. Moskowitz, a  
Certified Court Reporter and Certified Livenote  
Reporter.

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<div>Page 7</div> <div>1 APPEARANCES:</div> <div>2</div> <div>3 ULMER &amp; BERNE LLP</div> <div>4 BY: JEFFREY D. GEOPPINGER, ESQUIRE</div> <div>5 jgeoppinger@ulmer.com</div> <div>6 312 Walnut Street - Suite 1400</div> <div>7 Cincinnati, Ohio 45202-4029</div> <div>8 513.698.5000</div> <div>9 Counsel for the Defendant AmerisourceBergen</div> <div>10</div> <div>11 ALSO PRESENT:</div> <div>12 JUSTIN BILY</div> <div>13 Legal Videographer</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>Page 9</div> <div>1 REQUEST PAGE</div> <div>2</div> <div>3 INSTRUCTIONS NOT TO ANSWER:</div> <div>4 Page Line</div> <div>5 None</div> <div>6 REQUEST FOR PRODUCTION OF DOCUMENTS:</div> <div>7 Page Line Description</div> <div>8 None</div> <div>9 STIPULATIONS:</div> <div>10 Page Line</div> <div>11 None</div> <div>12 QUESTIONS MARKED:</div> <div>13 Page Line</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>

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1 TABLE OF CONTENTS	1 to this arrangement and waive any objections to
2 RENA M. CONTI, Ph.D.	2 this manner of reporting. If there are any
3 Examination	3 objections, please state them at this time.
4 By Mr. Goldberg.....Page 12	4 * * *
5 Index of Exhibits.....Page 8	5 THE COURT REPORTER: Hearing no
6 Reporter Certificate.....Page 242	6 objections, I will swear in the witness.
7 Read and Sign.....Page 243	7 * * *
8	8 RENA CONTI, after having been first
9	9 duly sworn, was examined and testified as
10	10 follows:
11	11 * * *
12	12 THE COURT REPORTER: Okay, Counsel,
13	13 please proceed.
14	14 MR. GOLDBERG: Thank you.
15	15 EXAMINATION BY MR. GOLDBERG:
16	16 Q Good morning, Dr. Conti. My name is
17	17 Seth Goldberg. I'm with the law firm Duane Morris,
18	18 and we represent the ZHP parties in this action.
19	19 I'm going to be asking you questions during the
20	20 deposition today on behalf of all of the defendants
21	21 in the case, as well.
22	22 Can you state your name for the
23	23 record, and your current address?
24	24 A Sure, Rena Conti, 2 Overlea Way,
25	25 Glenside, PA 19038.
Page 11	Page 13
1 THE VIDEOGRAPHER: We are going on the	1 Q Okay. You've been deposed before,
2 record at 10:17 on February 10th, 2022. This	2 Dr. Conti?
3 is Media Unit Number 1 of the video recorded	3 A I have.
4 deposition of Rena Conti regarding the	4 Q You understand, throughout the day,
5 valsartan litigation.	5 I'm going to ask you questions. You're going to
6 My name's Justin Bilely from the firm	6 provide answers. And if -- during the day, if we
7 Veritext, and I'm the videographer. The court	7 can try not to talk over one another, that would be
8 reporter is Jamie Moskowitz from the firm	8 helpful.
9 Veritext.	9 Your counsel or plaintiff's counsel
10 All counsel will be noted on the	10 may assert objections from time to time. Unless
11 stenographic record. Will the court reporter	11 they instruct you not to answer, you're to answer
12 please swear in the witness, and then we can	12 the question, okay, notwithstanding the objection.
13 begin.	13 If you don't understand --
14 * * *	14 A I understand.
15 PROCEEDINGS	15 Q If you don't understand a question
16 THE COURT REPORTER: The attorneys	16 I've asked, please ask me to clarify it or rephrase
17 participating in this deposition acknowledge	17 it. If you answer it, we'll assume that you
18 that I am not physically present in the	18 understood it. Okay?
19 deposition room and that I will be reporting	19 A I understand. Thank you.
20 this deposition remotely.	20 Q If you need to take a break at any
21 They further acknowledge that, in lieu	21 time, no problem. Just ask.
22 of an oath administered in person, the witness	22 A Okay.
23 will verbally declare his testimony in this	23 Q Have you taken any medications this
24 matter is under penalty of perjury.	24 morning that may impair your testimony today?
25 The parties and their counsel consent	25 A I took a couple of Tylenol, but I

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<p style="text-align: right;">Page 14</p> <p>1 don't think that's going to --</p> <p>2 Q Hopefully -- okay.</p> <p>3 Why don't we talk a little bit about</p> <p>4 your professional background?</p> <p>5 Can you explain what your current</p> <p>6 position is at Boston University?</p> <p>7 A Sure.</p> <p>8 I am associate professor in the</p> <p>9 Department of Markets, Public Policy and Law at the</p> <p>10 business school at Boston University. It's called</p> <p>11 Questrom School of Business. In addition, I am</p> <p>12 co-director of the institute -- of an institute</p> <p>13 called Technology &amp; Policy research Institute, which</p> <p>14 is an institute across the business school and the</p> <p>15 law school that focuses on issues related to</p> <p>16 technological innovation, its -- and its regulation.</p> <p>17 Q Are you -- are you currently teaching</p> <p>18 any courses?</p> <p>19 A Sadly, yes, I am. I am --</p> <p>20 Q What courses?</p> <p>21 A I am teaching Strategy in the</p> <p>22 Biopharmaceutical Industry --</p> <p>23 COURT REPORTER: I'm sorry. You're</p> <p>24 teaching...</p> <p>25 THE WITNESS: I teach Strategy in the</p>	<p style="text-align: right;">Page 16</p> <p>1 on drug pricing and regulation, and it's that report</p> <p>2 that the committee developed that is actually the --</p> <p>3 one of the textbooks that we use in my class.</p> <p>4 Q You said something about industry</p> <p>5 standard. I was trying to ask, industry standard</p> <p>6 for what? What -- you said something was the</p> <p>7 industry standard.</p> <p>8 A Oh, the materials that -- that I've</p> <p>9 developed for my course and developed in -- in other</p> <p>10 contexts during my research, are very widely used to</p> <p>11 teach about the industry, about the pharmaceutical</p> <p>12 industry.</p> <p>13 Q In terms of your expert consulting,</p> <p>14 you have an associate position at Greylock McKinnon?</p> <p>15 COURT REPORTER: Where?</p> <p>16 MR. GOLDBERG: Greylock McKinnon; is</p> <p>17 that correct?</p> <p>18 THE WITNESS: I'm sorry, is that a</p> <p>19 question?</p> <p>20 BY MR. GOLDBERG:</p> <p>21 Q Yes.</p> <p>22 A Okay. Right. So I have worked with</p> <p>23 Greylock McKinnon and Associates on -- on health</p> <p>24 litigation matters, again, largely in the</p> <p>25 pharmaceutical industry -- products, I guess, in the</p>
<p style="text-align: right;">Page 15</p> <p>1 Biopharmaceutical Industry. That is the class</p> <p>2 that I have taught for the better part of</p> <p>3 20 years.</p> <p>4 BY MR. GOLDBERG:</p> <p>5 Q What is that course about? Just give</p> <p>6 me a -- give me a thumbnail sketch of that course.</p> <p>7 A Sure.</p> <p>8 It's about the financing, organization</p> <p>9 and regulation of the pharmaceutical industry, and</p> <p>10 how firms in this industry, most notably the -- the</p> <p>11 pharmaceutical manufacturers themselves, innovate</p> <p>12 price, get reimbursed and generate revenue.</p> <p>13 Q Did you write a textbook for that</p> <p>14 course?</p> <p>15 A I'm in the process of writing a</p> <p>16 textbook now. Like I said, I have taught this class</p> <p>17 for the better part of 20 years, at</p> <p>18 Harvard University, at the University of Chicago and</p> <p>19 now at Boston University. And I developed many</p> <p>20 materials, including case studies, that are now the</p> <p>21 industry standard.</p> <p>22 I have a number of textbooks --</p> <p>23 Q Hang on --</p> <p>24 A Wait. Wait. So I was the economist</p> <p>25 on the National Academy of Science's recent report</p>	<p style="text-align: right;">Page 17</p> <p>1 pharmaceutical industry, again, for the better part</p> <p>2 of 20 years.</p> <p>3 Q And what do you do at</p> <p>4 Greylock McKinnon?</p> <p>5 A I provide expert services for -- in</p> <p>6 support of litigation.</p> <p>7 Q Do you do any consulting with</p> <p>8 Greylock McKinnon that is not litigation related?</p> <p>9 A No.</p> <p>10 Q Are there particular kinds of</p> <p>11 litigation that you work on for Greylock McKinnon?</p> <p>12 A Again, all of it's in -- on the</p> <p>13 pharmaceutical industry, related to pricing,</p> <p>14 reimbursement, coverage, competition and regulation.</p> <p>15 And I have been involved in a variety of antitrust</p> <p>16 matters, and a variety of -- of other types of legal</p> <p>17 matters.</p> <p>18 Q On a -- on a, you know, given day or</p> <p>19 given week, how many matters are you handling in</p> <p>20 your capacity as an -- this academic affiliate at</p> <p>21 Greylock?</p> <p>22 A It really depends on the time period</p> <p>23 and the year. Right now, I think I have maybe three</p> <p>24 cases that I'm working on in various forms.</p> <p>25 Q Well, are you working as an -- as an</p>

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<p>Page 18</p> <p>1 expert in all three of those cases?</p> <p>2 A Yes.</p> <p>3 Q Okay. And are those three cases</p> <p>4 products liability cases? Are they antitrust cases?</p> <p>5 What's the subject matter of those cases?</p> <p>6 A One of them is a liability case,</p> <p>7 and -- well, actually -- yeah. One of them is a</p> <p>8 liability case, and two others are antitrust cases.</p> <p>9 Q Generally, can you -- can you describe</p> <p>10 the mix on a percentage basis, between antitrust,</p> <p>11 patent, products liability, that you -- that you</p> <p>12 generally have?</p> <p>13 A So do you mean in relation to the work</p> <p>14 that I do at -- with Greylock McKinnon --</p> <p>15 Q Yes.</p> <p>16 A -- or other -- okay.</p> <p>17 Q Well, are you doing expert work</p> <p>18 outside of Greylock McKinnon?</p> <p>19 A Yes, I am.</p> <p>20 Q Okay. Is that -- I guess we'll --</p> <p>21 we'll get to your CV, and maybe you can show me on</p> <p>22 your CV where that is.</p> <p>23 But why don't we take it first with</p> <p>24 Greylock McKinnon, where your -- what the case mix</p> <p>25 is from antitrust, patents and other subject</p>	<p>Page 19</p> <p>1 matters?</p> <p>2 A I don't quite understand what you mean</p> <p>3 by "patent."</p> <p>4 Q Patent, patent, patent or intellectual</p> <p>5 property. Are you doing any expert work in</p> <p>6 intellectual property matters?</p> <p>7 A Not -- so patents are obviously an</p> <p>8 important part of the industry. But -- and they are</p> <p>9 related to the work that I'm doing, but I'm not</p> <p>10 doing any patent litigation work, if that is what</p> <p>11 you're asking.</p> <p>12 Q Yeah. So I'm asking, what is the --</p> <p>13 you know, the -- the makeup of the different subject</p> <p>14 matters that you're working on as an expert, as a</p> <p>15 general matter. You said antitrust. You said</p> <p>16 products liability. Are there other types of</p> <p>17 matters that you work on?</p> <p>18 A Okay. So at Greylock McKinnon, I'm</p> <p>19 largely working half and half on product liability</p> <p>20 and antitrust. I would say I have increasingly</p> <p>21 worked on product liability over the past couple of</p> <p>22 years, and -- but generally, there's a mix of that</p> <p>23 now.</p> <p>24 Q And explain what your expert work is</p> <p>25 when you're doing it not through Greylock McKinnon.</p>	<p>Page 20</p> <p>1 Are you -- do you have an independent expert</p> <p>2 consulting firm that you're just doing</p> <p>3 independently?</p> <p>4 A I am working on a number of matters</p> <p>5 that Greylock McKinnon has conflicts with, and</p> <p>6 I'm -- they are largely either business disputes</p> <p>7 between pharmaceutical firms --</p> <p>8 COURT REPORTER: Between what?</p> <p>9 THE WITNESS: Between pharmaceutical</p> <p>10 firms.</p> <p>11 COURT REPORTER: Uh-huh.</p> <p>12 THE WITNESS: Or matters related to</p> <p>13 government work that -- where I am serving as</p> <p>14 an expert and there are government agencies</p> <p>15 involved.</p> <p>16 BY MR. GOLDBERG:</p> <p>17 Q Can you describe what that -- can you</p> <p>18 give us a little bit more detail about what those</p> <p>19 kinds of matters are?</p> <p>20 MR. HONIK: Dr. Conti -- Dr. Conti,</p> <p>21 let me instruct you that while Mr. Goldberg's</p> <p>22 questions are fine, not to reveal any matters,</p> <p>23 particularly in the litigation sphere, in which</p> <p>24 there may not have been a normal date to</p> <p>25 disclose your involvement. And so be very</p>	<p>Page 21</p> <p>1 circumspect about that. Thank you.</p> <p>2 THE WITNESS: Thank you.</p> <p>3 On the government investigations</p> <p>4 and -- I am serving as an expert and have</p> <p>5 served as an expert in the past. And I can't</p> <p>6 provide any details.</p> <p>7 BY MR. GOLDBERG:</p> <p>8 Q Are there matters that you worked in</p> <p>9 terms of government investigations in the past that</p> <p>10 you can provide details about what the -- what the</p> <p>11 subject matter is of the investigation? Are you</p> <p>12 investigating cGMP practices? Are you investigating</p> <p>13 fraud? Are you investigating, you know, something</p> <p>14 related to the business? I'm just trying to get a</p> <p>15 sense of what you do as an expert in government</p> <p>16 investigation.</p> <p>17 A Sure. So every single day, all day</p> <p>18 long, all I do is think about the financing, the</p> <p>19 organization and the regulation of the</p> <p>20 pharmaceutical industry. So you can kind of fairly</p> <p>21 surmise from that that the work that I'm doing,</p> <p>22 either in business disputes between industry members</p> <p>23 is related to financing, organization and regulation</p> <p>24 of these products, and in the government work that I</p> <p>25 do, again, it's all related to financing,</p>
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<p style="text-align: right;">Page 22</p> <p>1 organization and regulation.</p> <p>2 I have been a special consultant to</p> <p>3 the Office of Generic Drugs for years, and have been</p> <p>4 involved in the regulation of pharmaceuticals by the</p> <p>5 Food and Drug Administration for a long time.</p> <p>6 And so a lot of the -- a lot of the</p> <p>7 work that I work on for government agencies is</p> <p>8 related to the regulation of these products.</p> <p>9 Q Is there a particular aspect of the</p> <p>10 regulation of these products that you focus on? And</p> <p>11 when you're -- let me qualify that. Regulation of</p> <p>12 pharmaceutical products that you focus on?</p> <p>13 A So I would say I have two broad</p> <p>14 expertise. The first is on pricing of these</p> <p>15 products; how it is priced by the pharmaceutical</p> <p>16 industry themselves, what are the factors that lead</p> <p>17 to prices being high, changing over time, increasing</p> <p>18 or decreasing with competition, both in the branded</p> <p>19 and specialty -- or branded and generic market.</p> <p>20 And then the second broad category of</p> <p>21 expertise is on competition, and specifically what</p> <p>22 are the factors that drive pharmaceutical companies</p> <p>23 to enter specific types of markets, particularly</p> <p>24 generic markets; what are the conditions upon which</p> <p>25 they can enter those markets; how does competition</p>	<p style="text-align: right;">Page 24</p> <p>1 and others.</p> <p>2 Q Okay. Got it.</p> <p>3 Back to the expert stuff, in terms of</p> <p>4 working as an expert on behalf of plaintiffs, on</p> <p>5 behalf of defendants, do you -- do you do more of</p> <p>6 one or the other?</p> <p>7 A So I have worked on the defendant</p> <p>8 side, largely in business disputes between different</p> <p>9 firms. In those cases, matters largely related to</p> <p>10 production of products and the regulation of those</p> <p>11 products have been domain.</p> <p>12 And then I would say -- I mean,</p> <p>13 obviously, in the government work I've done, it's</p> <p>14 largely been on the side of the government and</p> <p>15 taxpayers, consumers, that are insured by the</p> <p>16 government.</p> <p>17 And then -- and then I have done</p> <p>18 plaintiff's work on -- largely on antitrust matters.</p> <p>19 Q And in products work, are you on</p> <p>20 plaintiff's side more than defendant's side?</p> <p>21 A I'm sorry. I didn't hear the first</p> <p>22 part.</p> <p>23 Q In products -- in products liability</p> <p>24 matters, or consumer class action matters, are you</p> <p>25 on plaintiff's side more than defendant's side?</p>
<p style="text-align: right;">Page 23</p> <p>1 evolve over time; and to what extent do regulatory</p> <p>2 agencies support entry and sustained competition</p> <p>3 over time.</p> <p>4 Q I just want to come back -- I'd just</p> <p>5 like to clarify one thing.</p> <p>6 Going back to when you were talking</p> <p>7 about your coursework, and you -- the -- the</p> <p>8 materials that you said, you know, are used and have</p> <p>9 become an industry standard, when you -- when you're</p> <p>10 talking about the industry standard, you're saying</p> <p>11 the industry standard for teaching this stuff at</p> <p>12 universities. Is that -- is that what you mean?</p> <p>13 A Well, right. So many of my articles</p> <p>14 that I've published on the pricing of these products</p> <p>15 and the regulation of these products are used by</p> <p>16 myself to teach, but are also used by many other</p> <p>17 experts in the field to teach about this industry.</p> <p>18 And that's actually one of the conditions of tenure,</p> <p>19 is that there is an industry standard that -- that</p> <p>20 is met.</p> <p>21 And then I have developed coursework</p> <p>22 for materials that are used for teaching, case</p> <p>23 studies, that type of stuff, that are used by</p> <p>24 myself, and they are used by Harvard University</p> <p>25 professors. And they are used by Wharton professors</p>	<p style="text-align: right;">Page 25</p> <p>1 A I've largely worked on the plaintiff's</p> <p>2 side on those matters.</p> <p>3 Q Have you represented any defendants</p> <p>4 in -- as an -- as an expert, in a products liability</p> <p>5 action or consumer class action?</p> <p>6 A What do you mean by "consumer class</p> <p>7 action?" I'm sorry.</p> <p>8 Q Like -- like the claims that we're</p> <p>9 here for today, the economic loss claim. Consumers</p> <p>10 are claiming they should get a refund for a product.</p> <p>11 A Right. So I'm only -- I think I have</p> <p>12 three cases right now, one settled, on products</p> <p>13 liability. Each one of those cases, I was working</p> <p>14 on the plaintiff's side.</p> <p>15 Q So in your -- your expert consulting</p> <p>16 experience, you've done three products liability</p> <p>17 cases; is that correct?</p> <p>18 A Right, that I can talk about. Right.</p> <p>19 Q And of those three, all three were on</p> <p>20 behalf of plaintiffs?</p> <p>21 A Correct.</p> <p>22 Q How many other products liability</p> <p>23 matters have you worked on that you can't talk</p> <p>24 about?</p> <p>25 A At least one that comes to mind.</p>



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<p style="text-align: right;">Page 26</p> <p>1 Q And in that one, can you tell us                  2 whether it's on behalf of plaintiffs or defendants?                  3 A It was for the government.                  4 Q Okay. In 2021, since we just finished                  5 the year, how much of your income was generated from                  6 your work as an expert witness versus your income as                  7 a professor?                  8 A Somewhere maybe around a quarter.                  9 Q Can you quantify that in dollars, what                  10 that expert work looks like on an annual basis?                  11 A Do you mean in 2021?                  12 Q Yes, sure.                  13 A Okay. So pandemic year, I think I                  14 made approximately \$100,000, maybe \$80,000,                  15 somewhere around there, in 2021. Much of that was                  16 for cases that I worked on in previous years, not                  17 in -- in 2021.                  18 Q Has the pandemic caused you to have                  19 fewer cases or work?                  20 A Sadly, it's the reverse. All I do is                  21 sit in my house and work. I know you all probably                  22 feel the same way.                  23 Q We all share that -- we all share that                  24 experience that we're working way more due to the                  25 pandemic, especially in litigation.</p>	<p style="text-align: right;">Page 28</p> <p>1 Greylock and your first meetings with plaintiffs'                  2 counsel?                  3 A I think it was the month, or maybe the                  4 month previous, to when the pandemic started.                  5 Q February of '20?                  6 A February or March. I remember it was                  7 a very gray, cold day in Boston.                  8 Q Do you recall who the lawyers were for                  9 the plaintiffs that you met with for the first time                  10 when you met -- had that first meeting in this                  11 matter?                  12 A I think Ruben Honik and                  13 Conlee Whiteley and Layne Hilton were on that first                  14 call.                  15 Q Have you --                  16 A Maybe misremembering --                  17 THE COURT REPORTER: I'm sorry,                  18 Ms. who?                  19 THE WITNESS: Misremembering.                  20 THE COURT REPORTER: Misremembering?                  21 THE WITNESS: Misremembering. Sorry.                  22 My English.                  23 MR. HONIK: It's a thing, not a                  24 person.                  25 THE WITNESS: Exactly.</p>
<p style="text-align: right;">Page 27</p> <p>1 A I'm hoping to not be like that in                  2 2022.                  3 Q Yeah. In terms of the -- the business                  4 disputes where you've been an expert, have you                  5 represented pharmaceutical companies in those                  6 business disputes?                  7 A Yes. Again, every single day, all I                  8 do is think about this industry. So in those                  9 matters, they've been pharmaceutical companies.                  10 Q Are there -- are they generic                  11 companies or branded companies?                  12 A Both.                  13 Q Were any of the companies that you've                  14 represented in these matters, defendants in this                  15 case?                  16 A No.                  17 Q Have you -- let's talk about your                  18 retention in this matter. How did you -- how did                  19 you come about being retained in this matter?                  20 A I was contacted by one of the                  21 principals at Greylock McKinnon and Associates, and                  22 asked if I would be interested in discussing with                  23 the attorneys the general outlines of the -- of the                  24 matter.                  25 Q When was that first contact at</p>	<p style="text-align: right;">Page 29</p> <p>1 BY MR. GOLDBERG:                  2 Q Well, whoever those plaintiffs'                  3 counsel were, had you known any of them before that                  4 first meeting?                  5 A No.                  6 Q Had you worked with any of the                  7 plaintiffs' counsel that are on -- on the                  8 plaintiffs' executive committee in this case prior                  9 to starting work on this matter?                  10 A Not -- not that I can recall.                  11 Q Do you know if Greylock McKinnon had a                  12 prior relationship with any of the lawyers that                  13 represent the plaintiffs in this matter?                  14 A I don't know.                  15 Q Do you have any matters currently                  16 pending with any of the lawyers that represent                  17 plaintiffs in this matter, any other matters that                  18 you're working on?                  19 A I am sorry. What do you mean by                  20 "currently pending"?                  21 Q Are you an expert in any cases that                  22 are currently pending where the lawyers who are                  23 plaintiffs in this case are representing parties in                  24 that case?                  25 A I'm sorry. I don't -- I don't know</p>

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<p style="text-align: right;">Page 30</p> <p>1 what you mean by "currently pending".</p> <p>2 Q Okay. Are -- are you doing expert</p> <p>3 work in any other case where the lawyers who</p> <p>4 represent the plaintiffs in this case are involved?</p> <p>5 A Yes.</p> <p>6 Q What case is that?</p> <p>7 MR. HONIK: Let me caution you,</p> <p>8 Dr. Conti, that to the extent that there's no</p> <p>9 disclosure requirement in those matters, you</p> <p>10 should not reveal that today.</p> <p>11 THE WITNESS: Thank you. I cannot</p> <p>12 provide any details.</p> <p>13 BY MR. GOLDBERG:</p> <p>14 Q Which lawyers in plaintiffs' committee</p> <p>15 are involved in that case?</p> <p>16 MR. HONIK: Let me instruct you not to</p> <p>17 answer that for the same reason posited</p> <p>18 previously. It's effectively the same question</p> <p>19 and would reveal something -- excuse me -- and</p> <p>20 would reveal or disclose something that doesn't</p> <p>21 require to be disclosed at present. Thank you.</p> <p>22 THE WITNESS: I'm sorry. I cannot</p> <p>23 provide an answer.</p> <p>24 MR. GOLDBERG: Counsel, you can mark</p> <p>25 this portion of the transcript "highly</p>	<p style="text-align: right;">Page 32</p> <p>1 answer and reveal the type of matter, litigated</p> <p>2 matter.</p> <p>3 BY MR. GOLDBERG:</p> <p>4 Q In that matter, have you been asked to</p> <p>5 render an opinion that's similar to the opinion</p> <p>6 you've been -- provided in this case?</p> <p>7 MR. HONIK: Object to the form.</p> <p>8 THE WITNESS: Are you asking whether</p> <p>9 that matter is on the pharmaceutical industry</p> <p>10 and its regulation and financing?</p> <p>11 BY MR. GOLDBERG:</p> <p>12 Q Sure. Let's start with that.</p> <p>13 A Yes. Everything --</p> <p>14 MR. HONIK: Excuse me.</p> <p>15 THE WITNESS: Go ahead.</p> <p>16 MR. HONIK: Without waiving the</p> <p>17 objection, I'll permit you to answer that and</p> <p>18 only that question.</p> <p>19 THE WITNESS: Thank you.</p> <p>20 Everything I work on in my teaching,</p> <p>21 in my research and in the expert work that I</p> <p>22 provide to the government and to other</p> <p>23 entities, is related to the financing,</p> <p>24 organization and regulation of the</p> <p>25 pharmaceutical industry.</p>
<p style="text-align: right;">Page 31</p> <p>1 confidential" so that it doesn't have to be</p> <p>2 disclosed outside of this matter, but I think</p> <p>3 we're entitled to know if Dr. Conti is working</p> <p>4 for the lawyers who represent the plaintiffs in</p> <p>5 this case in another matter.</p> <p>6 MR. HONIK: She's already answered</p> <p>7 affirmatively to that question. But your</p> <p>8 pending question, to which I objected and</p> <p>9 instructed her not to answer, is -- is nearly a</p> <p>10 backdoor way of disclosing formally her</p> <p>11 involvement as an expert in cases in which</p> <p>12 there's not presently a disclosure requirement.</p> <p>13 Accordingly, I've instructed her, and</p> <p>14 she's followed it, not to identify the lawyers</p> <p>15 because that identification effectively reveals</p> <p>16 the matter in which she's working. That's the</p> <p>17 basis. So please ask another question.</p> <p>18 BY MR. GOLDBERG:</p> <p>19 Q That matter, is that a products</p> <p>20 liability matter?</p> <p>21 MR. HONIK: I instruct you not to</p> <p>22 answer.</p> <p>23 BY MR. GOLDBERG:</p> <p>24 Q Is it a -- is it an antitrust matter?</p> <p>25 MR. HONIK: I instruct you not to</p>	<p style="text-align: right;">Page 33</p> <p>1 THE COURT REPORTER: Of the</p> <p>2 pharmacy -- of the pharmacy...</p> <p>3 THE WITNESS: Of the pharmaceutical</p> <p>4 industry.</p> <p>5 THE COURT REPORTER: Thank you.</p> <p>6 THE WITNESS: Thank you.</p> <p>7 BY MR. GOLDBERG:</p> <p>8 Q When did you begin to work on that</p> <p>9 matter?</p> <p>10 A I'm sorry, on -- on the industry?</p> <p>11 Q No, on the matter that we've been</p> <p>12 discussing that you're working for plaintiffs'</p> <p>13 counsel in.</p> <p>14 MR. HONIK: I'll instruct you not to</p> <p>15 answer that question for the same reason.</p> <p>16 Seth, respectfully, these are just</p> <p>17 backdoor ways to try to get at your essential</p> <p>18 question, which is, tell me the other cases</p> <p>19 that you're involved in. And I won't allow</p> <p>20 Dr. Conti to reveal that.</p> <p>21 MR. GOLDBERG: Well, I -- I disagree.</p> <p>22 I don't need to know the name of the case. I</p> <p>23 don't need to know the names of the other</p> <p>24 parties, but I do think we're entitled to know</p> <p>25 what Dr. Conti is doing for plaintiffs' counsel</p>

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<p style="text-align: right;">Page 34</p> <p>1 in this case in other matters.</p> <p>2 MR. HONIK: Yeah, I don't agree. And</p> <p>3 moreover, I don't understand the last part of</p> <p>4 your observation. I have permitted you to ask</p> <p>5 her many questions about all of the matters</p> <p>6 that she's involved with, for whom she's doing</p> <p>7 these in terms of segments of industry and</p> <p>8 otherwise.</p> <p>9 But you know and I know that if you're</p> <p>10 involved as an expert consultant in a case in</p> <p>11 which the date for disclosure of experts has</p> <p>12 not yet arrived, that that is information that</p> <p>13 can't be revealed. So please move on.</p> <p>14 BY MR. GOLDBERG:</p> <p>15 Q How much money have you made from</p> <p>16 plaintiffs' counsel in that case?</p> <p>17 MR. HONIK: Without waiving the</p> <p>18 objection, you can answer. I think you did,</p> <p>19 didn't you?</p> <p>20 THE WITNESS: Thank you. None.</p> <p>21 BY MR. GOLDBERG:</p> <p>22 Q Do you have your retention in that</p> <p>23 case through Greylock McKinnon?</p> <p>24 A Yes.</p> <p>25 Q Are you charging in that matter the</p>	<p style="text-align: right;">Page 36</p> <p>1 generic entry in product markets, and have</p> <p>2 thought a lot about -- I have thought about and</p> <p>3 also researched the entry of manufacturers in</p> <p>4 this particular market.</p> <p>5 BY MR. GOLDBERG:</p> <p>6 Q When you say," in this particular</p> <p>7 market," what were you -- define what you mean by</p> <p>8 "in this particular market."</p> <p>9 A In the valsartan market.</p> <p>10 Q When you were studying or researching</p> <p>11 valsartan in connection with your interest in heart</p> <p>12 disease, what was the nature of the research?</p> <p>13 A Pricing, promotion and --</p> <p>14 THE COURT REPORTER: And -- and what?</p> <p>15 THE WITNESS: And access to these</p> <p>16 products.</p> <p>17 BY MR. GOLDBERG:</p> <p>18 Q What do you mean by "access"?</p> <p>19 A Patient use.</p> <p>20 Q Were you looking at it from an</p> <p>21 efficacy standpoint?</p> <p>22 A Safety and efficacy are both part -</p> <p>23 are both determinants of access. So I guess,</p> <p>24 generally, yes.</p> <p>25 Q But at that -- at that time, you</p>
<p style="text-align: right;">Page 35</p> <p>1 same fee, hourly fee, that you're charging in this</p> <p>2 matter?</p> <p>3 A I don't know.</p> <p>4 Q Have you generated an invoice yet in</p> <p>5 that matter?</p> <p>6 A No.</p> <p>7 Q Okay. Going back to the beginning of</p> <p>8 your retention in this case, prior to being retained</p> <p>9 or at least meeting plaintiffs' counsel in February,</p> <p>10 March 2020, had you done any research into</p> <p>11 valsartan?</p> <p>12 A Yes.</p> <p>13 Q In -- in what capacity did you do</p> <p>14 research into valsartan prior to that February,</p> <p>15 March 2020 time period?</p> <p>16 A In two separate capacities. The first</p> <p>17 is that I have a longstanding interest in some types</p> <p>18 products --</p> <p>19 COURT REPORTER: In some what?</p> <p>20 THE WITNESS: In some types of</p> <p>21 pharmaceutical products, which include drugs</p> <p>22 that are used to treat heart disease, valsartan</p> <p>23 being one of them, but there are many others.</p> <p>24 And then, in the other capacity, I</p> <p>25 have spent a fair amount of time thinking about</p>	<p style="text-align: right;">Page 37</p> <p>1 became generally familiar with the safety and</p> <p>2 efficacy of valsartan at that time?</p> <p>3 A I think I would think -- I think about</p> <p>4 that differently as an economist. So I am</p> <p>5 interested, again, in the pricing and the</p> <p>6 reimbursement and in the utilization of these drugs.</p> <p>7 Safety and efficacy of products are one of the</p> <p>8 determinants -- or two of the determinants of people</p> <p>9 using these products.</p> <p>10 Q Okay. So you -- you were kind of</p> <p>11 thinking about how many people are using it, the</p> <p>12 number of people who are using it, and that's sort</p> <p>13 of indicative of its safety and efficacy in some</p> <p>14 way?</p> <p>15 A No.</p> <p>16 Q Okay. Do you want to explain?</p> <p>17 A Sure.</p> <p>18 So I was thinking about the pricing of</p> <p>19 this product market, which included the -- the</p> <p>20 valsartan products, but not only the valsartan</p> <p>21 products. I've been thinking about the</p> <p>22 reimbursement of those products, so who pays what</p> <p>23 for them. And then I have -- I researched the use</p> <p>24 of those products, so what determines the use of</p> <p>25 those products, what are the general patterns of use</p>

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<p style="text-align: right;">Page 38</p> <p>1 in national prescriptions, in dispensing of 2 prescriptions in certain -- by certain -- 3 COURT REPORTER: I'm sorry. In 4 certain? 5 THE WITNESS: Sorry. In certain 6 markets, et cetera. 7 BY MR. GOLDBERG: 8 Q And by "these products," you're -- you 9 said it's more than valsartan. Are you talking 10 hypertension products generally, or -- or is it 11 heart disease products generally? 12 A Correct, drugs that are used to treat 13 heart disease. 14 Q What was the timeframe of doing this 15 kind of research? 16 A So I would say it overlapped with 17 my -- the completion of my dissertation. So I 18 finished my dissertation in 2007. I was researching 19 the use of these products and their pricing before I 20 finished my dissertation, so probably 2003, 2005. 21 And then it continued on from there. 22 Similarly, I was very -- I've been 23 very interested in competition, so when these 24 products are expected to experience generic entry, 25 undergo patent expiration; what types of product --</p>	<p style="text-align: right;">Page 40</p> <p>1 A No. This is just part of, again, the 2 work -- this is all part of understanding a little 3 bit more -- understanding this market. I was a 4 chemistry major when I entered college, so I 5 actually know what they are. So I -- I am familiar 6 with what they are before I was an economist. 7 Q And in between 2010 and 2020, did you 8 do any particular research on the occurrence of NDMA 9 or NDEA in pharmaceutical products? 10 A Okay. I'm sorry. Can you restate the 11 question or just -- just ask the question again? 12 Q Sure. 13 Between 2010, when you said that 14 article -- that article came out, and February 2020, 15 did you do any research in -- in the area of the 16 occurrence of NDMA or NDEA in pharmaceutical 17 products? 18 A Right. So there's a various body of 19 literature that was developing since, I think, at 20 least the early 2000s on -- and actually, probably, 21 before then, on -- on chemical contaminants that are 22 harmful to human health. I did some coursework on 23 that in -- at Harvard when I was finishing my -- 24 when I was doing my Ph.D. And I have been 25 interested in the topic especially since -- since I</p>
<p style="text-align: right;">Page 39</p> <p>1 or what types of firms enter into these markets; how 2 much competition is there; to what extent do these 3 prices go down over time; who uses these types of 4 products. I think I've been thinking about that 5 since at least 2010, 2011. 6 Q How about nitrosamines? Are you 7 familiar with nitrosamines? 8 A Yes. 9 Q Prior to the February, March 2020 10 timeframe, had you done any work in connection with 11 nitrosamines? 12 A Yes. There was -- President Bush had 13 a council on cancer that released a report in 2010 14 about toxins, and specifically chemicals that can 15 cause DNA damage and other types of human health 16 harms that people might be exposed to in the 17 United States. I read that report when it came out. 18 I have been generally interested in -- in 19 determining -- in chemicals that might impact 20 consumer health. 21 As an expert in pharmaceutical 22 economics and policy, this is kind of part of my -- 23 my job, is to understand what these things are. 24 Q Have you done any -- authored any 25 articles relating to nitrosamines?</p>	<p style="text-align: right;">Page 41</p> <p>1 did my dissertation. 2 Q All right. I think you said you 3 finished your dissertation before 2010? 4 A Right. I finished -- my dissertation 5 was awarded in -- or my Ph.D. was awarded in 2007. 6 Q All right. My -- my question was -- 7 I'm trying to be little more specific. 8 A Uh-huh. 9 Q My question was, since 2010, between 10 2010 and February of 2020, have you done any focused 11 research on the occurrence of NDMA and NDEA, in 12 particular, in pharmaceutical drugs? 13 A So I don't know what you mean by 14 "focused research." 15 Q Well, has -- has the particular focus 16 of research that you've done been the occurrence of 17 NDMA or for NDEA in pharmaceutical drugs? 18 A So -- so again, the occurrence of 19 these products and their threat to human health as 20 part of the pharmaceutical industry is something 21 that I have been aware of for a long time. And 22 because of product contamination and adulteration in 23 other product categories, not in valsartan, but in 24 other drugs since at least 2007, 2008, that involve 25 products made by Ranbaxy, products made at the Cidra</p>

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<p style="text-align: right;">Page 42</p> <p>1 plant, products made by Mylan, I am aware that there                  2 are a variety of chemicals that can contaminate                  3 pharmaceuticals and are harmful to human health.                  4 And NDMA is one of those products. It's not the                  5 only one.                  6 Q And I'm asking about NDMA. Have you                  7 studied NDMA prior to February of 2020?                  8 A NDMA and other products that have come                  9 up in my work between 2010 and 2020. Just like --                  10 so, again, I -- if you are an expert in this                  11 industry, you know that there have been some very                  12 significant quality manufacturing lapses in                  13 pharmaceutical products. That includes contaminated                  14 Heparin. It includes the products that were made at                  15 Ranbaxy and ultimately at Mylan as well, and the                  16 products that were made at the Cidra plant --                  17 COURT REPORTER: At the what?                  18 THE WITNESS: By Glaxo -- by                  19 GlaxoSmithKline.                  20 COURT REPORTER: I'm sorry. That were                  21 made at the...                  22 THE WITNESS: Cidra plant at -- owned                  23 by GlaxoSmithKline in Puerto Rico.                  24 There have also been other lapses in                  25 quality and in manufacturing that have occurred</p>	<p style="text-align: right;">Page 44</p> <p>1 Q Do you have Tab 66, what we have                  2 marked as Conti 1, in front of you?                  3 A I do. If you can just give me a                  4 second to read it, please.                  5 Q Okay. This is your retention                  6 agreement with plaintiffs' counsel in this case?                  7 A This is GMA's retention agreement with                  8 the attorneys on my behalf.                  9 THE COURT REPORTER: I'm sorry?                  10 THE WITNESS: On my behalf.                  11 BY MR. GOLDBERG:                  12 Q And it says that, in the first                  13 paragraph, that plaintiffs' executive committee has                  14 retained Greylock McKinnon Associates to provide                  15 consulting on economic issues and other related                  16 services.                  17 What -- what are the related services                  18 that -- that you're providing?                  19 A I don't know.                  20 Q It goes on to say that you're going                  21 to -- you've been retained to provide expert                  22 testimony as it relates to issues of the calculation                  23 of damages.                  24 A I see that.                  25 Q Are -- are you -- do you understand</p>
<p style="text-align: right;">Page 43</p> <p>1 particularly around 2010, 2011, 2012. And I                  2 have been very interested in what exactly those                  3 quality lapses were and -- and what are the                  4 nature of the -- what are the harms to human                  5 health of those types of lapses.                  6 So I am aware of nitrosamines, in                  7 addition to many other chemicals, being harmful                  8 to human health and have been aware of that                  9 during this time period.                  10 MR. GOLDBERG: Can we pull up Tab 66?                  11 BY MR. GOLDBERG:                  12 Q Dr. Conti, I want to show you your                  13 retention agreement in this case. I don't think you                  14 need to take the time to go through the binder, but                  15 if you want to, I just want to pull this up and mark                  16 this as Conti 1.                  17 (Whereupon, Exhibit Conti 1 was marked                  18 for Identification.)                  19 BY MR. GOLDBERG:                  20 Q This is -- can you see that okay? You                  21 have it up on the screen?                  22 A Yeah. I'm going to go get my binder.                  23 Q It's going to be Tab 66 in that                  24 binder.                  25 A Okay. Great.</p>	<p style="text-align: right;">Page 45</p> <p>1 that that -- that to be the scope of your testimony,                  2 the calculation of damages?                  3 MR. HONIK: Object to the form and to                  4 the extent that it calls for a legal expert                  5 opinion.                  6 You may answer.                  7 THE WITNESS: I have produced a report                  8 that is calculating damages in this matter.                  9 BY MR. GOLDBERG:                  10 Q So the answer is, yes, you understand                  11 the scope of your work to be in relation to the                  12 calculation of damages?                  13 MR. HONIK: Same objection.                  14 You may answer.                  15 THE WITNESS: Thank you.                  16 So up until this period in time, what                  17 I have largely worked on in this matter is                  18 related to the calculation of damages.                  19 MR. GOLDBERG: You can take that down,                  20 put that aside.                  21 BY MR. GOLDBERG:                  22 Q You generated a report in this matter                  23 in November of 2021. Can you describe, generally,                  24 what the process was for putting together that                  25 report?</p>



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<p style="text-align: right;">Page 46</p> <p>1 A I reviewed data. We --</p> <p>2 THE COURT REPORTER: I'm sorry,</p> <p>3 Doctor. Can you repeat that?</p> <p>4 THE WITNESS: Sure.</p> <p>5 I discussed with the attorneys the</p> <p>6 availability of data to calculate damages in</p> <p>7 this matter, and also theories of liability</p> <p>8 that would determine how we calculated</p> <p>9 damages -- or how I calculated damages. I</p> <p>10 worked with my staff to -- and with -- and with</p> <p>11 the attorneys, to cull materials that would be</p> <p>12 helpful in the calculation of damages. And I</p> <p>13 also reviewed regulatory documents and other</p> <p>14 facts that are relevant to the calculation of</p> <p>15 damages.</p> <p>16 And there's -- hold on. And there was</p> <p>17 lots of drafting, analysis, redrafting and</p> <p>18 finally, the final report.</p> <p>19 BY MR. GOLDBERG:</p> <p>20 Q How long do you think it took to</p> <p>21 generate the report from when you started to work --</p> <p>22 work on it?</p> <p>23 MR. HONIK: Seth, can we agree that</p> <p>24 when you use the word, "report," you're</p> <p>25 referring to the expert declaration of</p>	<p style="text-align: right;">Page 48</p> <p>1 pretty intently, at least starting over the summer.</p> <p>2 Q Over which summer?</p> <p>3 A Last summer, 2021.</p> <p>4 Q You mentioned the staff. How big was</p> <p>5 your staff for this matter, and who were they?</p> <p>6 A The people that I have worked most</p> <p>7 closely with are Bennett Erickson and Sarah Stone,</p> <p>8 both employees at Greylock McKinnon, both people</p> <p>9 that I work with pretty closely, generally. There</p> <p>10 might be some other staff that I don't know as well</p> <p>11 that have worked on this case.</p> <p>12 Q Do you have a sense of how much time</p> <p>13 Bennett put into this matter?</p> <p>14 A No. Bennett's worked a lot on this</p> <p>15 matter. But I -- I don't know. I don't see his</p> <p>16 billings.</p> <p>17 Q Do you see anybody's billings for this</p> <p>18 matter, or does that all go to Greylock admins?</p> <p>19 A I am very grateful for the work that</p> <p>20 Greylock does, and no, I don't see any of the</p> <p>21 billings. I don't -- I'm not involved in any of the</p> <p>22 administration.</p> <p>23 Q Do you have a sense of how many hours</p> <p>24 you put into the declaration?</p> <p>25 A Frankly, no.</p>
<p style="text-align: right;">Page 47</p> <p>1 Dr. Conti --</p> <p>2 MR. GOLDBERG: Yes.</p> <p>3 MR. HONIK: -- of November 10th of</p> <p>4 last year.</p> <p>5 MR. GOLDBERG: Yes, the expert</p> <p>6 declaration.</p> <p>7 MR. HONIK: Thank you.</p> <p>8 THE WITNESS: I'm sorry. Can you ask</p> <p>9 me the question --</p> <p>10 MR. HONIK: How long did it take you?</p> <p>11 That's what he asked.</p> <p>12 THE WITNESS: To generate the report,</p> <p>13 correct?</p> <p>14 BY MR. GOLDBERG:</p> <p>15 Q Yes.</p> <p>16 A Okay. Many months.</p> <p>17 Q How many months?</p> <p>18 A A lot. A lot of time because we were</p> <p>19 waiting -- we were discussing. We were waiting for</p> <p>20 data. We were -- and then calculating damages and</p> <p>21 then writing the report.</p> <p>22 Q Many, a lot, do you have -- was it</p> <p>23 10 months, more than 10 months?</p> <p>24 A I would say -- I mean, we -- I was</p> <p>25 working on this, and staff was working on this</p>	<p style="text-align: right;">Page 49</p> <p>1 Q Do you expect it to be more than</p> <p>2 25 hours?</p> <p>3 A Yes.</p> <p>4 Q More than 50 hours?</p> <p>5 A Yes.</p> <p>6 Q More than 100 hours?</p> <p>7 A I would say close to 100 hours, sounds</p> <p>8 about right, but I don't --</p> <p>9 THE COURT REPORTER: I'm sorry. One</p> <p>10 more time.</p> <p>11 THE WITNESS: I don't have an exact</p> <p>12 accounting.</p> <p>13 BY MR. GOLDBERG:</p> <p>14 Q Your -- the retention agreement, which</p> <p>15 we marked as Conti 1, says your hourly rate is \$675.</p> <p>16 Does that sound right to you?</p> <p>17 A Hold on. Let me just look again.</p> <p>18 Q Sure.</p> <p>19 A So, yeah, it does. I think my hourly</p> <p>20 rate has gone up a little bit over time, maybe by</p> <p>21 \$100, but I'm not exactly sure.</p> <p>22 Q And for -- you would invoice your time</p> <p>23 to Greylock, as well?</p> <p>24 A Yes.</p> <p>25 Q What are -- what do Bennett -- what</p>

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<p style="text-align: right;">Page 50</p> <p>1 are Bennett and Sara's backgrounds? Are they                  2 Ph.D.s? Are they -- what -- what do they do?                  3 A So Bennett and Sarah both have -- are                  4 both highly trained quantitative people. I would                  5 say Sarah largely assists me on research through                  6 identifying documents and specific facts that might                  7 be helpful. I would say Bennett largely works on                  8 data cleaning, manipulation and analysis. I have                  9 not seen either of their CVs, but I have worked very                  10 closely with them for a long time.                  11 Q When you think about your expert                  12 declaration, it's broken up into -- sort of at the                  13 beginning -- your calculations of damages kind of                  14 appear at the end of the declaration. Did -- did                  15 either Bennett or Sarah do more in terms of the                  16 calculations of damages? How did the work break up                  17 in terms of writing, drafting your report?                  18 A Okay. I think you're                  19 mischaracterizing my report, number one.                  20 So the estimate of damages is found in                  21 the front, and then the discussion of how to                  22 calculations -- how to calculate the report is kind                  23 of in the middle. And then the actual -- actual                  24 calculations are summarized at the end. And then                  25 there are appendices that provide the details of the</p>	<p style="text-align: right;">Page 52</p> <p>1 but I wrote my report. And they worked at my                  2 direction.                  3 Q And then did you provide drafts to                  4 plaintiff's counsel to obtain comments from them                  5 about your report?                  6 MR. HONIK: I'm sorry. I didn't hear                  7 the question. May I have it back, Jamie?                  8 THE COURT REPORTER: Sure.                  9 (Whereupon, the question was read back                  10 as requested.)                  11 MR. HONIK: Thank you. It's a yes or                  12 no.                  13 THE WITNESS: Yes.                  14 BY MR. GOLDBERG:                  15 Q Did anyone outside of                  16 Greylock McKinnon or plaintiff's counsel provide                  17 input to your report?                  18 A No.                  19 Q Did anyone at Boston University help                  20 gather information for your report?                  21 A No.                  22 MR. GOLDBERG: Can we pull up Tab 52?                  23 I'm gonna mark as Tab 52 Defendant's Amended                  24 Notice to Videotaped Deposition of Dr. Conti.                  25 (Whereupon, Exhibit Conti 2 was marked</p>
<p style="text-align: right;">Page 51</p> <p>1 data and the specific calculations.                  2 I wrote my report.                  3 Q What do you mean by that?                  4 A I mean I wrote my report.                  5 Q Okay. You mentioned that there were                  6 lots of drafts and back and forth. You wrote it,                  7 you shared it with your colleagues at                  8 Greylock McKinnon to comment on it?                  9 A I think that's a mischaracterization.                  10 Q Did your colleagues at                  11 Greylock McKinnon not comment on your draft report?                  12 A Again, I think that's a                  13 mischaracterization.                  14 Q Okay. So just tell me. This isn't                  15 too much of a mystery. I'm just trying to                  16 understand.                  17 Did you share your report with your                  18 team at Greylock McKinnon so they could provide                  19 edits to it and comment to it?                  20 A Okay. So I wrote my report, and                  21 Greylock -- folks who work at Greylock McKinnon                  22 helped me fill in citations where I asked them to                  23 provide -- to identify full citations for certain                  24 types of facts. They helped me fill in specific                  25 numbers. They helped me construct certain exhibits,</p>	<p style="text-align: right;">Page 53</p> <p>1 for Identification.)                  2 MR. HONIK: And we're calling that                  3 Conti 2?                  4 MR. GOLDBERG: And this is going to be                  5 marked as Conti 2, yes.                  6 BY MR. GOLDBERG:                  7 Q Do you recognize this document,                  8 Dr. Conti?                  9 A Yes.                  10 Q Did you receive this document?                  11 A Yes.                  12 Q And this document, you understand,                  13 made certain document requests of you?                  14 A Yes. I understand on Exhibit A,                  15 Page 3, or actually, Page 2, 3 and 4.                  16 Q What did you do to respond to this set                  17 of document requests?                  18 MR. HONIK: Dr. Conti, I have no                  19 objection to the question, but don't reveal                  20 discussions with counsel. It's protected by                  21 the work product privilege.                  22 THE WITNESS: Thank you.                  23 So there were 17 requests. They                  24 included my current up-to-date resume or CV.                  25 That, I worked on with Sarah Stone to get it to</p>



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<p style="text-align: right;">Page 54</p> <p>1 be updated, and then it was provided to counsel</p> <p>2 to provide to you.</p> <p>3 Number 2 was a list of all articles,</p> <p>4 abstracts, studies, reports, seminar materials,</p> <p>5 presentations, publications or other writings</p> <p>6 authored or co-authored by me from 2022 to the</p> <p>7 present, that relate to the use of data after</p> <p>8 team members -- the use of pharmaceutical</p> <p>9 data --</p> <p>10 Q Doctor. Doctor, I don't --</p> <p>11 A Hold on.</p> <p>12 Q Hang on. Hang on. Hang on.</p> <p>13 MR. HONIK: Mr. Goldberg, let her</p> <p>14 finish, and then you can interject whatever --</p> <p>15 MR. GOLDBERG: Hang on a second. It's</p> <p>16 not -- the answer is not responsive to the</p> <p>17 question. And also, we really don't need to</p> <p>18 waste -- just hang on, Doctor. We don't need</p> <p>19 to waste the time. I'm not asking you to read</p> <p>20 the request out loud. I'm not asking you to</p> <p>21 read it. My question was what did you do to</p> <p>22 respond.</p> <p>23 MR. HONIK: Excuse me. Excuse me.</p> <p>24 Seth, respectfully, she is completely</p> <p>25 responsive to your question. It's within her</p>	<p style="text-align: right;">Page 56</p> <p>1 in specifics. So -- so there's a --</p> <p>2 Q What did you --</p> <p>3 A Hold on, please let me finish.</p> <p>4 You requested 17 separate items, so in</p> <p>5 order to answer your question, I am happy to tell</p> <p>6 you, for each request, how I answered -- how I</p> <p>7 gathered documents and provided that information.</p> <p>8 Q Okay. We don't have to do that.</p> <p>9 Okay. We'll -- we'll get to it.</p> <p>10 MR. GOLDBERG: Can we pull up document</p> <p>11 65, please?</p> <p>12 BY MR. GOLDBERG:</p> <p>13 Q Do you recognize the document that's</p> <p>14 on the screen?</p> <p>15 A No.</p> <p>16 MR. GOLDBERG: Marking as Conti 3, the</p> <p>17 document entitled, "Plaintiffs' Objections and</p> <p>18 Responses to Defendants' Notice of Videotaped</p> <p>19 Deposition of Rena Conti, Ph.D."</p> <p>20 (Whereupon, Exhibit Conti 3 was marked</p> <p>21 for Identification.)</p> <p>22 BY MR. GOLDBERG:</p> <p>23 Q Is this the first time you're seeing</p> <p>24 this document, Dr. Conti?</p> <p>25 A Well, let me look through in detail,</p>
<p style="text-align: right;">Page 55</p> <p>1 province to answer it in whatever way she</p> <p>2 thinks is appropriate. To frame her response,</p> <p>3 she is going through each request and</p> <p>4 identifying what she did.</p> <p>5 Now, I'd like her to complete her</p> <p>6 response which you cut off. If you'd like to</p> <p>7 sharpen your question in some way and perhaps</p> <p>8 give her an instruction, that's fine. I have</p> <p>9 no objection.</p> <p>10 MR. GOLDBERG: That's fine.</p> <p>11 MR. HONIK: But -- but she was in the</p> <p>12 middle -- she was in the middle of a response,</p> <p>13 which was highly responsive, even if it didn't</p> <p>14 satisfy what you wanted.</p> <p>15 You can continue, Dr. Conti, and then</p> <p>16 pause.</p> <p>17 MR. GOLDBERG: Objection. I'm</p> <p>18 withdrawing -- I'm withdrawing the question, so</p> <p>19 there's no reason...</p> <p>20 MR. HONIK: That's fine. Very good.</p> <p>21 Thank you. Next question.</p> <p>22 BY MR. GOLDBERG:</p> <p>23 Q Did you -- did you collect any</p> <p>24 documents to respond to this request?</p> <p>25 A Yes. That's what I'm trying to answer</p>	<p style="text-align: right;">Page 57</p> <p>1 please. I'm on Page 6. I think there are --</p> <p>2 Q Yeah, my question was --</p> <p>3 A -- 15 pages. You asked me if I had</p> <p>4 seen this, and I'm saying I'm going to look through.</p> <p>5 Q We can go off the record while you do</p> <p>6 that.</p> <p>7 MR. HONIK: Are you nearly done,</p> <p>8 Dr. Conti?</p> <p>9 THE WITNESS: I'm on Page 8 now. If</p> <p>10 you can just give me a little bit more time.</p> <p>11 MR. GOLDBERG: Let's go off the</p> <p>12 record.</p> <p>13 THE VIDEOGRAPHER: The time is 11:29.</p> <p>14 We're going off the record.</p> <p>15 (Whereupon, a short break was taken.)</p> <p>16 THE VIDEOGRAPHER: The time is 11:30.</p> <p>17 We're back on the record.</p> <p>18 BY MR. GOLDBERG:</p> <p>19 Q Dr. Conti, have you seen this document</p> <p>20 before, what we've marked as Conti 3?</p> <p>21 A No, I have not.</p> <p>22 MR. GOLDBERG: Can you pull up -- the</p> <p>23 document -- the document that's Tab -- I</p> <p>24 believe it's Tab 0. Do you have a copy of your</p> <p>25 report handy? If not, there's one in the</p>

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<p style="text-align: right;">Page 58</p> <p>1 binder.</p> <p>2 A I didn't hear you with it.</p> <p>3 THE COURT REPORTER: I didn't hear</p> <p>4 you.</p> <p>5 Q Your report is the first document in</p> <p>6 Binder 1. Do you have -- get that unless you have a</p> <p>7 copy of it handy.</p> <p>8 A I have Tab 1 in front of me.</p> <p>9 Q Okay. Actually, before we get to</p> <p>10 that --</p> <p>11 MR. GOLDBERG: And that can come down,</p> <p>12 sorry about that.</p> <p>13 Could you please pull up</p> <p>14 document 70 -- I'm sorry, not 70, document 67.</p> <p>15 THE VIDEOGRAPHER: This will be</p> <p>16 Exhibit 4?</p> <p>17 MR. GOLDBERG: This will be, yes.</p> <p>18 THE WITNESS: I'm sorry. Did you say</p> <p>19 64?</p> <p>20 MR. HONIK: 67.</p> <p>21 MR. GOLDBERG: Document 67, which we</p> <p>22 are marking as Exhibit Conti 4.</p> <p>23 (Whereupon, Exhibit Conti 4 was marked</p> <p>24 for Identification.)</p> <p>25</p>	<p style="text-align: right;">Page 60</p> <p>1 A Right. I think winter 2020 is when we</p> <p>2 first started having discussions, like I said,</p> <p>3 before the pandemic.</p> <p>4 Q Yeah. Okay. Yeah. I know earlier</p> <p>5 you said February, March, but it looks like it was</p> <p>6 more like January that you got into this matter; is</p> <p>7 that correct?</p> <p>8 A Well, that's what it says here, so</p> <p>9 must be.</p> <p>10 Q And just going through -- at the time,</p> <p>11 it looks like your hourly rate was \$675 an hour if</p> <p>12 we go to that column. And you said that your hourly</p> <p>13 rate is different now?</p> <p>14 A Is that a question?</p> <p>15 Q Well, I'm trying to -- do you know</p> <p>16 what your hourly rate is now? It looks like if you</p> <p>17 go three or four pages in --</p> <p>18 A Yeah.</p> <p>19 Q What is your hourly rate now?</p> <p>20 A I think it's either 750 or 775. I</p> <p>21 think it has changed a little bit over time.</p> <p>22 Q Okay. We'll get there, but it is 775.</p> <p>23 Let's just go down this -- let's just</p> <p>24 go through this so we can get some names here. Who</p> <p>25 is -- after -- so you have four entries for</p>
<p style="text-align: right;">Page 59</p> <p>1 BY MR. GOLDBERG:</p> <p>2 Q Do you recognize document -- the</p> <p>3 document we have marked as Conti 4?</p> <p>4 A No.</p> <p>5 Q I'll represent to you that these were</p> <p>6 the invoices of Greylock McKinnon Associates that</p> <p>7 were provided in response to the document request.</p> <p>8 Do you have any reason to disagree with that</p> <p>9 representation?</p> <p>10 A No.</p> <p>11 Q And you can see that this is -- at</p> <p>12 least on the first page, you can see it's an invoice</p> <p>13 submitted to Conlee Whitely and David Stanoch.</p> <p>14 Okay. Do you see that?</p> <p>15 A Yes.</p> <p>16 Q And those are plaintiffs' counsel in</p> <p>17 this case, right?</p> <p>18 A That's my understanding, yes.</p> <p>19 Q I just want to ask you about a few of</p> <p>20 the invoices here, some entries on these, just so we</p> <p>21 can understand. It looks like -- looking at the</p> <p>22 first page, and I do believe these are in</p> <p>23 chronological order. It looks like you first</p> <p>24 started working on this back in January of 2020. Is</p> <p>25 that more or less correct?</p>	<p style="text-align: right;">Page 61</p> <p>1 Dr. Conti in 2020. And who is the next person?</p> <p>2 A Mike Augustejn.</p> <p>3 Q What did Mike do?</p> <p>4 A It says that he discussed --</p> <p>5 Q Okay. What -- what does -- what did</p> <p>6 Mike do on the -- not in this particular entry.</p> <p>7 What did Mike do for the project?</p> <p>8 A Mike is also an expert on data and --</p> <p>9 THE COURT REPORTER: And what?</p> <p>10 THE WITNESS: Data, acquisition in</p> <p>11 cleaning, in manipulation, in analysis. And so</p> <p>12 I would expect that he would have worked on</p> <p>13 this in that capacity.</p> <p>14 BY MR. GOLDBERG:</p> <p>15 Q Going to the next person,</p> <p>16 Bennett Erickson?</p> <p>17 A Correct.</p> <p>18 Q What did Bennett Erickson do,</p> <p>19 generally, for the project?</p> <p>20 MR. HONIK: Objection, asked and</p> <p>21 answered.</p> <p>22 THE WITNESS: Right. So I've already</p> <p>23 answered --</p> <p>24 MR. GOLDBERG: I'm sorry.</p> <p>25 THE WITNESS: So --</p>

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<p style="text-align: right;">Page 62</p> <p>1 BY MR. GOLDBERG:</p> <p>2 Q I can withdraw the question. I'm</p> <p>3 sorry. You did talk about Bennett before.</p> <p>4 The next person is Brian Hebert. What</p> <p>5 did Brian do for the project, generally?</p> <p>6 A So it looks here that he billed time</p> <p>7 for import checking of manufacturing data.</p> <p>8 Q Do you know what -- what manufacturing</p> <p>9 data he looked at?</p> <p>10 A I don't.</p> <p>11 Q Do you know what -- what is meant by</p> <p>12 the phrase "manufacturing data"?</p> <p>13 A I'm assuming it was data that was</p> <p>14 related to the sale of these products.</p> <p>15 Q That's pretty broad. Do you -- is</p> <p>16 there any particular data that you think he looked</p> <p>17 at related to the sale of the products?</p> <p>18 A I don't know.</p> <p>19 Q If you go on into 2021, now you've got</p> <p>20 Sarah Honan added to the invoices. Who is</p> <p>21 Sarah Honan? Is that the Sarah we mentioned</p> <p>22 earlier? No, that was Sarah Stone.</p> <p>23 A Right, Sarah Stone. So Sarah Stone</p> <p>24 and Bennett Erickson are the people that I have been</p> <p>25 working with at GMA on this matter. There are a</p>	<p style="text-align: right;">Page 64</p> <p>1 What -- what was that?</p> <p>2 A I don't know.</p> <p>3 Q You don't know what he meant by "cGMP</p> <p>4 market share analysis"?</p> <p>5 A I'm assuming it has something to do</p> <p>6 with -- there are multiple manufacturers of these</p> <p>7 products at issue in this matter. But I don't know</p> <p>8 what he specifically meant on this date.</p> <p>9 Q Do you know if Bennett's cGMP market</p> <p>10 share analyses were produced in this case?</p> <p>11 A I'm sorry, what do you mean by</p> <p>12 "produced"?</p> <p>13 Q Provided to plaintiffs' counsel for</p> <p>14 production in this case.</p> <p>15 A You mean did Bennett turn those</p> <p>16 documents over to you?</p> <p>17 Q Well, did Greylock McKinnon or Bennett</p> <p>18 provide them to plaintiffs' counsel to produce in</p> <p>19 this case?</p> <p>20 A Well, I'm assuming -- so I -- I mean,</p> <p>21 the short answer is I don't know. The longer answer</p> <p>22 is by definition, my report contains the sales of</p> <p>23 these products across different manufacturers over</p> <p>24 time. And so I'm assuming that it's related to what</p> <p>25 Bennett states here, and those -- all of that back</p>
<p style="text-align: right;">Page 63</p> <p>1 handful of other people that generally support</p> <p>2 Bennett and Sarah that I don't know as well. So</p> <p>3 Sarah Honan is -- is one of those people.</p> <p>4 Q Do you know -- can you describe,</p> <p>5 generally, what she did for the project?</p> <p>6 A It says here "Imported IQVIA data."</p> <p>7 Q If you -- on the third page of the</p> <p>8 document, assuming you have double-sided copies,</p> <p>9 it's -- it's invoice 21158.</p> <p>10 A Yes. That's not what's on the screen,</p> <p>11 but I see -- I am on that.</p> <p>12 Q Okay. The first entry for Bennett</p> <p>13 says, "Work on valsartan cGMP market share</p> <p>14 analysis."</p> <p>15 What -- do you know what that means?</p> <p>16 A I'm sorry, I'm a little confused,</p> <p>17 because what's on the screen is not -- I don't think</p> <p>18 what we're talking about, so can we just make sure</p> <p>19 we're on the same page?</p> <p>20 So invoice 21158, is that what we're</p> <p>21 talking about right now?</p> <p>22 Q Right.</p> <p>23 A Okay. Good. So --</p> <p>24 Q The question is, Bennett says he</p> <p>25 worked on valsartan cGMP market share analysis.</p>	<p style="text-align: right;">Page 65</p> <p>1 up and -- have been produced. They are part of my</p> <p>2 report.</p> <p>3 Q Did you rely on a market share</p> <p>4 analysis in reaching your report -- in reaching your</p> <p>5 opinions?</p> <p>6 A Again, by definition, the at-issue</p> <p>7 products are valsartan drugs made by different</p> <p>8 manufacturers. My report had to identify those</p> <p>9 manufacturers in national data and then apportion</p> <p>10 sales of those products across different</p> <p>11 manufacturers.</p> <p>12 If you go further down on the fourth</p> <p>13 line, Bennett says, "Work on review of repackager</p> <p>14 NDCs. Create comparison of FDA-recalled" --</p> <p>15 COURT REPORTER: I'm sorry, Doctor.</p> <p>16 Bennett says, "Work on review of..."</p> <p>17 THE WITNESS: "Repackager NDCs.</p> <p>18 Create comparison of FDA-recalled NDCs to IQVIA</p> <p>19 NDCs."</p> <p>20 I think that -- so -- so there is an</p> <p>21 FDA list of recalled valsartan products, and --</p> <p>22 that identifies products by NDC code in the</p> <p>23 IQVIA data. I can identify products by NDC</p> <p>24 code, but products are very commonly repackaged</p> <p>25 and relabeled by private label -- by private</p>

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<p style="text-align: right;">Page 66</p> <p>1 label distributors and even retailers such as</p> <p>2 CVS or Costco.</p> <p>3 And so in order to go from the NDC</p> <p>4 list produced by the -- by the FDA to Xponent</p> <p>5 was actually sold into the U.S. market, there</p> <p>6 is -- there is a job that needs to get done.</p> <p>7 Because repackagers or relabelers will change</p> <p>8 the NDC code by definition.</p> <p>9 And so there was work that was done to</p> <p>10 match NDC codes or drugs at issue in this</p> <p>11 matter with the national sales that we had on</p> <p>12 these products. All of that was produced in my</p> <p>13 report.</p> <p>14 BY MR. GOLDBERG:</p> <p>15 Q Let's just start at the beginning of</p> <p>16 this. And if you go back to the first page of this</p> <p>17 document, do you see it says, for you, Dr. Conti --</p> <p>18 THE COURT REPORTER: I'm sorry, Seth.</p> <p>19 Can you start that again?</p> <p>20 BY MR. GOLDBERG:</p> <p>21 Q It looks like you invoiced two hours,</p> <p>22 2.6 hours; is that correct?</p> <p>23 A Yes, I see that here.</p> <p>24 Q And if you go along with me to the</p> <p>25 next invoice, there's -- there's no entry for</p>	<p style="text-align: right;">Page 68</p> <p>1 MR. HONIK: Thank you.</p> <p>2 MR. GOLDBERG: Sure.</p> <p>3 MR. HONIK: I see it now. Thank you.</p> <p>4 BY MR. GOLDBERG:</p> <p>5 Q And then if we go to --</p> <p>6 A It's two pages, actually. It's two</p> <p>7 pages.</p> <p>8 Q Right. And there's no entry for</p> <p>9 Dr. Conti on that invoice, correct?</p> <p>10 A Correct.</p> <p>11 Q And then the next invoice is 21158.</p> <p>12 Do you see that?</p> <p>13 A Yes.</p> <p>14 Q And there's no invoice for Dr. Conti</p> <p>15 there? There's no time invoiced for Dr. Conti in</p> <p>16 that invoice, correct?</p> <p>17 A Correct, but there is mention of me</p> <p>18 participating in calls with the attorney.</p> <p>19 Q So you participated in that call on</p> <p>20 May 24th, 2021, right?</p> <p>21 A Yes.</p> <p>22 Q Let's turn to the next invoice, which</p> <p>23 is 21617. There we see Dr. Conti, you billed</p> <p>24 12.75 hours, right? Correct?</p> <p>25 A I'm just -- I didn't -- I didn't</p>
<p style="text-align: right;">Page 67</p> <p>1 Dr. Conti; am I correct?</p> <p>2 A You mean -- again, I don't know --</p> <p>3 Q Invoice --</p> <p>4 COURT REPORTER: All right. I</p> <p>5 cannot -- I can't take both of you down at the</p> <p>6 same time. And you're both interrupting each</p> <p>7 other, and so you're not giving me a chance to</p> <p>8 do my job.</p> <p>9 MR. GOLDBERG: Okay. Let's not worry</p> <p>10 about the screen since you have the binder in</p> <p>11 front of you, and that was the purpose of</p> <p>12 giving you the document in hard copy. So can</p> <p>13 you -- and the tech can follow along if the</p> <p>14 tech can follow along.</p> <p>15 BY MR. GOLDBERG:</p> <p>16 Q Right now I'm looking at</p> <p>17 Invoice 21024, which is in your binder. Do you see</p> <p>18 that.</p> <p>19 A Yes.</p> <p>20 Q Okay. And there's not an entry for</p> <p>21 Dr. Conti in there, correct?</p> <p>22 MR. HONIK: Seth, I think for the</p> <p>23 benefit of myself and all other counsel, can</p> <p>24 the tech bring up the specific document?</p> <p>25 MR. GOLDBERG: Sure.</p>	<p style="text-align: right;">Page 69</p> <p>1 prepare this invoice, so I'm just looking through --</p> <p>2 Q Sure.</p> <p>3 A -- what is actually billed. That's</p> <p>4 correct.</p> <p>5 Q And that invoice takes us through</p> <p>6 12-29-21. It's the last date anyone billed time on</p> <p>7 that invoice. Do you see that?</p> <p>8 A Well, it's the last time that some of</p> <p>9 the staff billed time on the invoice. I can see</p> <p>10 that.</p> <p>11 Q Based on my review of these invoices,</p> <p>12 before December 29th, 2021, you billed, in total,</p> <p>13 approximately 15 hours for your work in this matter;</p> <p>14 is that a fair representation?</p> <p>15 MR. HONIK: Object to form.</p> <p>16 THE WITNESS: Well, again, I didn't</p> <p>17 produce these documents, so I just simply</p> <p>18 billed for the time that's listed here. But if</p> <p>19 there's a different process for what I submit</p> <p>20 and what GMA does in what is listed here if</p> <p>21 there is time, I'm happy -- that I billed, I'm</p> <p>22 happy to total it up. I haven't done that.</p> <p>23 It looks like, in the first invoice,</p> <p>24 there's about two-and-a-half hours.</p> <p>25 COURT REPORTER: There is -- there's</p>

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<p style="text-align: right;">Page 70</p> <p>1 what?</p> <p>2 THE WITNESS: About two-and-a-half</p> <p>3 hours.</p> <p>4 In the last invoice there's about 12,</p> <p>5 almost 13 hours. So I think that's fair. So</p> <p>6 there's approximately 15 to 16 hours that I</p> <p>7 billed for my time on these invoices.</p> <p>8 BY MR. GOLDBERG:</p> <p>9 Q Are there other Greylock McKinnon</p> <p>10 invoices that haven't been produced?</p> <p>11 A So I am woefully behind in my time on</p> <p>12 this matter. I have a list of the time that I have</p> <p>13 worked on this, but it has not been completely</p> <p>14 submitted to Greylock McKinnon or to the attorneys.</p> <p>15 Q But you were asked --</p> <p>16 Greylock McKinnon was asked to produce your invoices</p> <p>17 in this case, and you didn't comply with that</p> <p>18 request?</p> <p>19 MR. HONIK: Object to the form.</p> <p>20 THE WITNESS: Of course I did.</p> <p>21 BY MR. GOLDBERG:</p> <p>22 Q Well, why don't we have that time and</p> <p>23 your invoices for that?</p> <p>24 A You mean -- you mean all the invoices?</p> <p>25 Q Yeah.</p>	<p style="text-align: right;">Page 72</p> <p>1 also teaching intensely during that time. I have</p> <p>2 actually been teaching intensely since July. And so</p> <p>3 I have been actively working on this case, but I</p> <p>4 have not submitted my time because I frankly did not</p> <p>5 have the time to do it.</p> <p>6 Q Well, let's look at invoice 21617.</p> <p>7 That's the last invoice in the -- in the packet.</p> <p>8 That's your 2021 time. And --</p> <p>9 A I'm sorry. I'm sorry. I'm not -- I'm</p> <p>10 not following you. Where are you?</p> <p>11 Q It's up on the screen, invoice 21617.</p> <p>12 It's the last invoice in the packet.</p> <p>13 A I can see that.</p> <p>14 Q So you billed an hour in May of 2021,</p> <p>15 correct? You billed an hour in September 2021,</p> <p>16 correct? And -- am I correct?</p> <p>17 A I can see that there.</p> <p>18 Q And you billed 10.75 hours in</p> <p>19 October 2021, correct?</p> <p>20 A Correct.</p> <p>21 Q How much time do you expect to bill</p> <p>22 plaintiffs for 2021 in addition to these</p> <p>23 12.75 hours?</p> <p>24 A So I have a preliminary listing of my</p> <p>25 time, and it amounts to approximately 60 hours.</p>
<p style="text-align: right;">Page 71</p> <p>1 A Because I'm really busy, frankly. I'm</p> <p>2 teaching intensely. I've been doing a lot of other</p> <p>3 work to support government activity. And I have a</p> <p>4 very sick mother that I am managing her time and</p> <p>5 also taking care of my kid. So I've been very, very</p> <p>6 busy over the past two months and --</p> <p>7 Q Well, I'm not -- I'm not --</p> <p>8 MR. HONIK: Don't interrupt her,</p> <p>9 please.</p> <p>10 THE WITNESS: So I have been really,</p> <p>11 really busy, and so my time is not complete.</p> <p>12 BY MR. GOLDBERG:</p> <p>13 Q I'm not concerned about your time in</p> <p>14 2022. You --</p> <p>15 A I'm saying that my time in 2021, I</p> <p>16 spent the majority of 2021 dealing with a very sick</p> <p>17 mother, traveling in three separate cities and</p> <p>18 taking care of my child, in addition to myself, in</p> <p>19 addition to very intense teaching and other</p> <p>20 activities. I am behind in my time.</p> <p>21 Q Were you able to put your time in for</p> <p>22 some invoices, but not others; is that what you're</p> <p>23 saying?</p> <p>24 A What I'm saying is my mother became</p> <p>25 very sick last summer, and so my time -- and I was</p>	<p style="text-align: right;">Page 73</p> <p>1 Q And that's for 2021?</p> <p>2 A Yes. Oh, 2021 and 2022.</p> <p>3 Q And how much of that time is 2021</p> <p>4 versus 2022?</p> <p>5 A I would say the majority.</p> <p>6 Q Is 2021?</p> <p>7 A Correct.</p> <p>8 Q How much time have you spent on this</p> <p>9 matter -- excuse me -- in 2022?</p> <p>10 A In preparing for the deposition and</p> <p>11 doing a handful of other things, maybe about</p> <p>12 20 hours or so. I don't have a specific accounting</p> <p>13 yet. Again, I've been going back and forth between</p> <p>14 Boston, New York, Philadelphia and Chicago, because</p> <p>15 my mother is really sick, for every single week</p> <p>16 since the new year.</p> <p>17 Q Do you think you'd be able to provide</p> <p>18 that preliminary list to your counsel so that we can</p> <p>19 see it?</p> <p>20 A Sure. I mean, my -- my plan is to --</p> <p>21 to finish it. I don't like to submit bills, and I</p> <p>22 don't -- I don't like to submit bills that I don't</p> <p>23 feel -- that aren't triple checked, and so I have a</p> <p>24 process for doing that.</p> <p>25 MR. GOLDBERG: Why don't we go off the</p>



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<p style="text-align: right;">Page 74</p> <p>1 record and take a five-minute break just to 2 give everybody a minute? 3 MR. HONIK: Why don't we call it 4 10 minutes and come back at 10:07. Okay? 5 MR. GOLDBERG: Sounds good. 6 THE VIDEOGRAPHER: The time is 11:57. 7 This ends Media Unit Number 1. 8 (Whereupon, a short break was taken.) 9 THE VIDEOGRAPHER: The time is 12:11. 10 This begins Media Number 2, and back on the 11 record. 12 BY MR. GOLDBERG: 13 Q Dr. Conti, if you could pull and put 14 in front of you your report -- or your declaration, 15 which we marked as -- which we are going to mark as 16 Conti 5. 17 (Whereupon, Exhibit Conti 5 was marked 18 for Identification.) 19 BY MR. GOLDBERG: 20 Q And I'd like to start at the beginning 21 of your report. 22 A Just give me a second to get it. 23 Q Okay. Let's start at the beginning of 24 your report. I'm going to ask you questions about 25 it in different places, but I'd like to start just</p>	<p style="text-align: right;">Page 76</p> <p>1 that question. 2 Going to the next paragraph, you say, 3 "I have been asked by plaintiffs' counsel to assume 4 that the at-issue valsartan products manufactured 5 and sold by the defendants" -- and I'm gonna go now 6 to the bottom -- "were recalled" -- "that were 7 recalled in 2018 and 2019 were adulterated and 8 misbranded." 9 Do you see that? 10 A Yes. 11 Q What do you mean by "at-issue 12 valsartan products"? 13 A The valsartan products that were 14 listed in Footnote 3 and Footnote 4. 15 Q When you use the phrase "at-issue 16 valsartan products," are you limiting that to 17 valsartan products that contained NDMA or NDEA? 18 A No. 19 COURT REPORTER: I'm sorry? 20 THE WITNESS: No. 21 MR. GOLDBERG: Can we go off the 22 record for one second? 23 THE VIDEOGRAPHER: The time is 12:16. 24 We're going off the record. 25 (Whereupon, a discussion was held off</p>
<p style="text-align: right;">Page 75</p> <p>1 at Paragraph 1. 2 You said you were retained to provide 3 opinions and calculations regarding the -- the 4 injury and damages incurred by classes of consumers 5 and end-payers in this matter. 6 By "this matter," you're referring to 7 the amended economic class action complaint, which 8 is at Footnote 1, correct? 9 A Yes. 10 Q I'm just going to remind you to speak 11 up a little bit, or maybe the microphone needs to be 12 turned up. 13 And by "injury in this matter" -- you 14 use the phrase "injury" -- you're -- you're talking 15 about an economic injury of this matter, correct? 16 A Correct. 17 Q And your damages -- you're not 18 providing opinions on liability, you're providing 19 opinions on damages, right? 20 MR. HONIK: Object to form. 21 THE WITNESS: I'm providing opinions 22 on economic injury and damages. 23 BY MR. GOLDBERG: 24 Q You're not -- you're not -- you 25 haven't reached an opinion as to -- well, strike</p>	<p style="text-align: right;">Page 77</p> <p>1 the record.) 2 THE VIDEOGRAPHER: The time is 12:18. 3 We're back on the record. 4 BY MR. GOLDBERG: 5 Q So when you're using the phrase 6 "at-issue valsartan products" in Paragraph 2 of your 7 declaration and throughout your declaration, 8 you're -- you're including valsartan products that 9 may not have contained NDMA or NDEA? 10 MR. HONIK: Object to form, asked and 11 answered. 12 THE WITNESS: When I am referring to 13 "at-issue valsartan products," they are the 14 ones listed in Footnote 2 and Footnote -- I'm 15 sorry -- Footnote 3 and Footnote 4 of my 16 report. 17 BY MR. GOLDBERG: 18 Q Footnote 3 and Footnote 4 refer to 19 recalled valsartan products, correct? 20 MR. HONIK: Object to form. 21 THE WITNESS: No, not solely. That's 22 a mischaracterization. So Footnote 3 and 23 Footnote 4 define at-issue valsartan products. 24 And they include products manufactured by -- 25 I'm going to say this, and it's -- I'm going to</p>

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<p style="text-align: right;">Page 78</p> <p>1 butcher the name -- Zhejiang Huahai, Teva,  2 Hetero, Torrent, Mylan and Aurobindo. And it  3 includes the valsartan products marketed under  4 Diovan name and their generic equivalent and  5 then marketed under the Exforge name and their  6 generic equivalent during the time period  7 2020 -- 2012 through 2018.  8 BY MR. GOLDBERG:  9 Q So you are including in at-issue  10 valsartan products all valsartan manufactured by  11 those defendants between 2012 and 2018?  12 A Correct.  13 Q That paragraph at the end talks  14 about -- it says that you -- you were asked to  15 assume that those products were adulterated and  16 misbranded. On what basis do you --  17 A I'm sorry. I'm sorry. I don't  18 know -- what -- what do you mean by "at the end"?  19 Q Okay. If you look at -- if you look  20 at the paragraph, it says, "I have been asked" --  21 A Paragraph 2, okay.  22 Q You were asked to assume that those  23 products were adulterated and misbranded, correct?  24 A Correct.  25 Q On what basis were you asked to make</p>	<p style="text-align: right;">Page 80</p> <p>1 MR. GOLDBERG: What you understand --  2 MR. HONIK: Excuse me. Excuse me.  3 MR. GOLDBERG: Counsel, don't  4 interrupt. Don't interrupt.  5 MR. HONIK: I'm going to protect this  6 record in every single way that I want to. And  7 as a courtesy to Ms. Moskowitz, I simply heard  8 a noncontroversial three words and offered them  9 to her to move things along. Thank you.  10 MR. GOLDBERG: Counsel, what do you  11 understand to be the -- the adulteration that  12 you assumed?  13 MR. HONIK: I'm not -- I'm not here to  14 answer your questions. If it's directed --  15 MR. GOLDBERG: I'm sorry. I'm sorry,  16 Dr. Conti.  17 BY MR. GOLDBERG:  18 Q I'd like to -- I'd like you to explain  19 what you under- -- what you assumed.  20 A So, again, the assumption of  21 adulteration and misbranding is detailed in the  22 complaint and cited in my Paragraph 1 and  23 Paragraph 2 in Footnotes 1, 2, 3 and 4.  24 Q It's fair to say, since you assume  25 those facts that are in that complaint, you didn't</p>
<p style="text-align: right;">Page 79</p> <p>1 that assumption?  2 A I'm sorry. I don't understand the  3 question.  4 Q What were the -- what was the basis  5 for the adulteration that you were asked to assume?  6 A My understanding is, that basis is  7 outlined in the complaint, which I reference in the  8 first paragraph of my report and also Footnote 1.  9 Q Was there any particular aspect of  10 these drugs that made them -- that you were asked to  11 assume made them adulterated?  12 A Again, the basis of adulteration and  13 misbranding is detailed in the complaint. And the  14 definition of "adulterated" and "misbranded" is also  15 outlined in the complaint, and is also outlined in  16 my report in later paragraphs.  17 COURT REPORTER: Is also outlined in  18 my report...  19 MR. HONIK: In later paragraphs, she  20 said.  21 COURT REPORTER: Thank you.  22 MR. GOLDBERG: Counsel, Counsel,  23 there's no need for you to testify.  24 MR. HONIK: I'm not testifying. It's  25 just that I heard her --</p>	<p style="text-align: right;">Page 81</p> <p>1 reach any independent determination about whether  2 there was an adulteration, correct?  3 A Again, I was asked to assume certain  4 facts about the adulteration and misbranding of  5 valsartan products at issue in this matter.  6 Q So the answer to my question is yes,  7 you didn't independently conclude that there was an  8 adulterated drug?  9 MR. HONIK: Object to form.  10 BY MR. GOLDBERG:  11 Q You were asked to make that  12 assumption?  13 MR. HONIK: Object to the form.  14 BY MR. GOLDBERG:  15 Q Correct?  16 A I was asked to make that assumption,  17 correct, as outlined in the complaint and in the  18 footnotes listed here.  19 Q If you go on to Paragraph 4 of your  20 complaint -- of your report, sorry --  21 A That's okay.  22 Q The first few lines is where I'm  23 looking. It says, "The adulteration derives from  24 the defendant manufacturers' allowance of chronic  25 and pervasive deficiencies in the manufacturing of</p>



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<p style="text-align: right;">Page 82</p> <p>1 at-issue valsartan products."</p> <p>2 What did you mean by "chronic and</p> <p>3 pervasive deficiencies"?</p> <p>4 A My understanding is that there were --</p> <p>5 there are systematic failures of cGMP in the</p> <p>6 manufacturing of the at-issue valsartan products by</p> <p>7 the manufacturers.</p> <p>8 Q What are those systematic failures</p> <p>9 that you're referring to?</p> <p>10 MR. HONIK: Objection, asked and</p> <p>11 answered.</p> <p>12 THE WITNESS: There -- there is -- my</p> <p>13 understanding is that there are -- there are</p> <p>14 many of them, and those are outlined in the</p> <p>15 complaint and also supporting FDA documents of</p> <p>16 cGMP violations that the manufacturers were</p> <p>17 cited for.</p> <p>18 BY MR. GOLDBERG:</p> <p>19 Q You wrote your report, correct?</p> <p>20 A I did.</p> <p>21 Q Okay. So when you wrote "chronic and</p> <p>22 pervasive deficiencies," what were you -- what were</p> <p>23 you documenting? What chronic and pervasive --</p> <p>24 MR. HONIK: Objection, asked and</p> <p>25 answered.</p>	<p style="text-align: right;">Page 84</p> <p>1 looked at and relied upon in reaching your opinions,</p> <p>2 that's listed here; is that correct?</p> <p>3 A I don't think that's accurate, because</p> <p>4 again, I am in -- as an expert in the regulation of</p> <p>5 the pharmaceutical industry, and in many other</p> <p>6 contexts, I have spent a lot of time thinking about</p> <p>7 the -- the requirements of manufacturers, that they</p> <p>8 need to meet, in order to meet cGMP, and also</p> <p>9 violation of cGMP. I have also spent a lot of time</p> <p>10 thinking about and thinking on adulteration and</p> <p>11 misbranding of products, generally, in this</p> <p>12 industry.</p> <p>13 So again, it's -- the materials relied</p> <p>14 upon or the ones listed here are the most germane to</p> <p>15 this specific matter. But my experience is also</p> <p>16 germane. That's in Attachment A.</p> <p>17 Q Okay. So my question was, the</p> <p>18 documents that you relied upon to reach your</p> <p>19 opinions in this matter, leaving aside your</p> <p>20 experience and your general knowledge, but the</p> <p>21 specific documents that you relied upon to reach</p> <p>22 your opinions in this matter, are set forth in</p> <p>23 Attachment B, correct?</p> <p>24 MR. HONIK: Object to the form, asked</p> <p>25 and answered.</p>
<p style="text-align: right;">Page 83</p> <p>1 BY MR. GOLDBERG:</p> <p>2 Q What chronic and pervasive</p> <p>3 deficiencies were you referring to?</p> <p>4 MR. HONIK: Object to form, asked and</p> <p>5 answered.</p> <p>6 THE WITNESS: The ones that are</p> <p>7 referred to in the complaint at issue in this</p> <p>8 matter.</p> <p>9 BY MR. GOLDBERG:</p> <p>10 Q Any others?</p> <p>11 A No.</p> <p>12 Q Could you -- I -- I should have done</p> <p>13 this before, but if you could look at Attachment B</p> <p>14 to your report, which is up on the screen, as well,</p> <p>15 this -- this -- this attachment says, "Materials</p> <p>16 relied upon." Did you prepare this attachment?</p> <p>17 A My staff, under my direction, prepared</p> <p>18 this document.</p> <p>19 Q And is it fair to say that these were</p> <p>20 the materials you relied upon in reaching your</p> <p>21 opinions?</p> <p>22 A In addition to my expertise and my</p> <p>23 experience in this matter -- or my experience in</p> <p>24 this industry.</p> <p>25 Q So there was a document that you</p>	<p style="text-align: right;">Page 85</p> <p>1 THE WITNESS: I don't -- I mean,</p> <p>2 again, I don't quite understand the distinction</p> <p>3 you're making. So again, my expertise and</p> <p>4 experience in the regulation of this industry</p> <p>5 informs everything I do, including the opinions</p> <p>6 that -- and the calculations that I performed</p> <p>7 in this matter.</p> <p>8 Attachment A provides my CV, which has</p> <p>9 an extensive list of things that I have</p> <p>10 published on this industry. But Attachment B</p> <p>11 is enumerating the materials that I</p> <p>12 specifically relied on in this matter. But I</p> <p>13 don't see how I could distinguish between my</p> <p>14 experience generally in this industry and the</p> <p>15 materials that I relied on.</p> <p>16 BY MR. GOLDBERG:</p> <p>17 Q Well, you just -- you did, because</p> <p>18 this document says, "Materials Relied Upon." So</p> <p>19 you're making a distinction between your CV and the</p> <p>20 materials that you relied upon, right?</p> <p>21 A No, you are. No, you are. What I'm</p> <p>22 saying is my experience informs the materials that I</p> <p>23 relied upon, by definition. I mean, I -- I know a</p> <p>24 lot about cGMP and the regulation of the</p> <p>25 products --</p>



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<p style="text-align: right;">Page 90</p> <p>1 systematic --</p> <p>2 THE COURT REPORTER: On the</p> <p>3 systematic --</p> <p>4 THE WITNESS: And pervasive quality</p> <p>5 assurance.</p> <p>6 COURT REPORTER: Excuse me, Counsel.</p> <p>7 One second. Let me see if I can turn my volume</p> <p>8 up.</p> <p>9 THE VIDEOGRAPHER: Mr. Goldberg, I</p> <p>10 think the -- the paper shuffling may be</p> <p>11 distracting a little bit.</p> <p>12 THE WITNESS: Correct. It's very hard</p> <p>13 to hear.</p> <p>14 COURT REPORTER: Okay. I put my</p> <p>15 volume up.</p> <p>16 BY MR. GOLDBERG:</p> <p>17 Q Did you review any document that --</p> <p>18 that detailed for you a failure to implement quality</p> <p>19 assurance practices by the defendant manufacturers?</p> <p>20 MR. HONIK: Object to form, asked and</p> <p>21 answered.</p> <p>22 THE WITNESS: Yes. The complaint</p> <p>23 details systematic and pervasive deficiency</p> <p>24 in -- in the cGMP. And then there are FDA</p> <p>25 documents that are supportive of that for each</p>	<p style="text-align: right;">Page 92</p> <p>1 THE VIDEOGRAPHER: The time is 12:42.</p> <p>2 We're back on the record.</p> <p>3 BY MR. GOLDBERG:</p> <p>4 Q I want you to listen to the questions</p> <p>5 I'm going to ask. I just want to you answer the</p> <p>6 questions I'm going to ask. Okay?</p> <p>7 The binder that -- the binder that you</p> <p>8 have in front of you now --</p> <p>9 A Correct.</p> <p>10 Q -- you did not provide that binder to</p> <p>11 your counsel before today, correct?</p> <p>12 MR. HONIK: Object to the form of the</p> <p>13 question.</p> <p>14 THE COURT REPORTER: What was your</p> <p>15 answer?</p> <p>16 THE WITNESS: I mean, I did not -- I,</p> <p>17 me, provide it. It's the complaint and the</p> <p>18 backup and some of the documents listed in the</p> <p>19 complaint. The complaint is listed in my</p> <p>20 Attachment B, and the documents that are</p> <p>21 related specifically to inspection reports,</p> <p>22 FDA, failure notices to the -- to each of the</p> <p>23 manufacturers are just the complaint. They're</p> <p>24 just the backup to the complaint.</p> <p>25</p>
<p style="text-align: right;">Page 91</p> <p>1 of the defendant manufacturers that details</p> <p>2 many different deficiencies in cGMP.</p> <p>3 BY MR. GOLDBERG:</p> <p>4 Q Which FDA documents --</p> <p>5 A Hold on. In the manufacturing of</p> <p>6 these products.</p> <p>7 Q Which FDA documents are you referring</p> <p>8 to?</p> <p>9 A Hold on a second. We were just</p> <p>10 looking at the materials relied upon. I think it's</p> <p>11 in Attachment B.</p> <p>12 So there's the complaint and</p> <p>13 then -- and -- I don't see it assessed here, but I</p> <p>14 have a binder of FDA documents that are specific to</p> <p>15 each one of the manufacturers that I have reviewed</p> <p>16 that are related to the at-issue products here.</p> <p>17 Q What binder are you referring to?</p> <p>18 A I'm happy to get it if you can just</p> <p>19 give me a second.</p> <p>20 MR. GOLDBERG: Let's go off the</p> <p>21 record.</p> <p>22 THE VIDEOGRAPHER: The time is 12:42.</p> <p>23 We're going off the record.</p> <p>24 (Whereupon, a discussion was held off</p> <p>25 the record.)</p>	<p style="text-align: right;">Page 93</p> <p>1 BY MR. GOLDBERG:</p> <p>2 Q Okay. I understand.</p> <p>3 So you're saying you looked at the</p> <p>4 complaint and the exhibits to the complaint?</p> <p>5 A Correct.</p> <p>6 Q That's what is in that binder?</p> <p>7 A Yes. And specifically, I reviewed</p> <p>8 the -- the backup material that the complaint</p> <p>9 references related to the systematic and</p> <p>10 persuasive [sic] failures of cGMP for each of the</p> <p>11 defendants.</p> <p>12 So I'm gonna say this incorrectly</p> <p>13 again, Zhejiang Huahai --</p> <p>14 Q You don't have to -- you don't have to</p> <p>15 name the defendants. We know who they are.</p> <p>16 A Okay. No, I'm just telling you -- I'm</p> <p>17 saying to you, not the defendants, but for the</p> <p>18 specific documents related to cGMP violations, the</p> <p>19 products that I looked -- the manufacturers that I</p> <p>20 looked at were Zhejiang --</p> <p>21 MR. HONIK: You can say ZHP. ZHP.</p> <p>22 THE WITNESS: ZHP. Thank you.</p> <p>23 ZHP and the FDA warning letters</p> <p>24 related to that. Mylan, in multiple ways, and</p> <p>25 Aurobindo, Torrent, Hetero and Lantech.</p>

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<p style="text-align: right;">Page 94</p> <p>1 THE COURT REPORTER: What was the last  2 one?  3 THE WITNESS: And Lantech.  4 BY MR. GOLDBERG:  5 Q Yes or no, the documents that you  6 relied on for the pervasive deficiencies that you  7 referred to, are the complaint and the exhibits  8 attached to the complaint?  9 MR. HONIK: Object to the form, asked  10 and answered.  11 THE WITNESS: Okay. So I have  12 answered your question a bunch of times. So  13 again, there's --  14 MR. GOLDBERG: I'm going to strike  15 the -- I'm going to withdraw the question.  16 Counsel, we're going to off the record.  17 THE VIDEOGRAPHER: The time is 12:46.  18 We are going off the record.  19 (Whereupon, a discussion was held off  20 the record.)  21 MR. HONIK: Let's proceed on the  22 stenographic record. Are we off the video  23 record?  24 THE VIDEOGRAPHER: We are off the  25 video.</p>	<p style="text-align: right;">Page 96</p> <p>1 see that?  2 A Yes.  3 Q Were there any particular reasons that  4 you were asked to assume that are listed here?  5 MR. HONIK: Object to the form of the  6 question.  7 THE WITNESS: All of them. So the --  8 my -- I was -- hold on.  9 MR. HONIK: She's responding to your  10 question. Please stop interrupting her.  11 THE WITNESS: So I -- thank you.  12 I was asked to assume these products  13 were misbranded. This paragraph, Paragraph 23  14 in my report, lists the definition of  15 "misbranding" according to the  16 Food and Drug Administration. And the  17 definition is inclusive.  18 BY MR. GOLDBERG:  19 Q So you were asked to assume that all  20 of these particular reasons that a drug can be  21 misbranded applied to the valsartan in this case?  22 MR. HONIK: Objection to form.  23 THE WITNESS: That is -- that is a  24 mischaracterization of my testimony. I was  25 asked to assume that these products at issue</p>
<p style="text-align: right;">Page 95</p> <p>1 MR. HONIK: Okay. Before we go back  2 on the video, is there anything else you need  3 to say, Seth? I don't want to waste more time.  4 MR. GOLDBERG: Well, you want me to  5 put it on the record, so I'm going to.  6 MR. HONIK: That's fine. Do you want  7 it on the video record?  8 MR. GOLDBERG: Sure.  9 MR. HONIK: Okay. Queue us, please,  10 Justin.  11 THE VIDEOGRAPHER: The time is 12:48.  12 We're back on the record.  13 BY MR. GOLDBERG:  14 Q Let's turn to Paragraph 23 of your  15 report. In this paragraph, you refer --  16 A Hold on. I'm not there yet. Hold on.  17 Paragraph 23 or Page 23?  18 Q Paragraph 23.  19 A Great. Thank you. Okay. Just give  20 me one second.  21 Q In this paragraph --  22 A Just give me -- just give me one  23 second. Okay.  24 Q In this paragraph, you're referring to  25 reasons the FDA deems a drug as misbranded. Do you</p>	<p style="text-align: right;">Page 97</p> <p>1 were misbranded. And paragraph 23 is providing  2 a definition by the FDA of what "misbranded"  3 means.  4 BY MR. GOLDBERG:  5 Q And my particular question is, were  6 you asked to assume that any of these particular  7 reasons occurred with respect to the at-issue  8 valsartan products?  9 MR. HONIK: Object to the form, asked  10 and answered.  11 THE WITNESS: I was asked to assume  12 that the at-issue valsartan products were  13 misbranded. "Misbranded" is defined by the  14 U.S. Food and Drug Administration in a very  15 particular way. And that definition is  16 provided in Paragraph 23 of my report.  17 BY MR. GOLDBERG:  18 Q Looking at Paragraph 23, which of  19 these specific reasons for misbranding do you  20 believe applied in this -- with respect to the  21 at-issue valsartan products?  22 MR. HONIK: Object to the form, asked  23 and answered.  24 THE WITNESS: The complaint uses the  25 term "misbranded." From the perspective of</p>

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<p style="text-align: right;">Page 98</p> <p>1 regulation of pharmaceutical industry, there is</p> <p>2 a particular definition of misbranding that the</p> <p>3 U.S. Food and Drug Administration uses. My</p> <p>4 understanding, and what I was asked to assume,</p> <p>5 is that the term "misbranded" is specific to</p> <p>6 the U.S. Food and Drug Administration's</p> <p>7 definition. And the definition is listed here</p> <p>8 and is inclusive.</p> <p>9 BY MR. GOLDBERG:</p> <p>10 Q You -- you understand that a</p> <p>11 misbranding can occur for any one of these reasons,</p> <p>12 right?</p> <p>13 A Again, I was asked to assume that</p> <p>14 these products were misbranded.</p> <p>15 The definition of "misbranding" by the</p> <p>16 U.S. Food and Drug Administration is provided here,</p> <p>17 and it's inclusive.</p> <p>18 Q So you don't agree with my question?</p> <p>19 You don't agree that any one of these that are</p> <p>20 listed in 20 -- in Paragraph 23 could be a reason</p> <p>21 for misbranding?</p> <p>22 MR. HONIK: Object to form, asked and</p> <p>23 answered.</p> <p>24 THE WITNESS: Okay. The FDA has a</p> <p>25 very specific definition of "misbranded." It</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. GOLDBERG: No. Counsel --</p> <p>2 MR. HONIK: No.</p> <p>3 MR. GOLDBERG: Counsel, let me just</p> <p>4 say that you -- you are interfering with this</p> <p>5 deposition, and the witness is clearly</p> <p>6 filibustering. And we will -- we will not</p> <p>7 continue with this. Judge Vanaskie has been</p> <p>8 very clear that he will not permit</p> <p>9 filibustering by witnesses, period. He's</p> <p>10 actually sanctioned witnesses for it. And if</p> <p>11 we have to do it, we will get him on the phone</p> <p>12 for this.</p> <p>13 I tried to do this with you off the</p> <p>14 record, but you refused. I tried to do this in</p> <p>15 a way that would not color the testimony, but</p> <p>16 you did not want to do that. You wanted it on</p> <p>17 the record. The reality is, as the last five</p> <p>18 questions will demonstrate, this witness is</p> <p>19 filibustering and not answering the questions</p> <p>20 that are being asked. Period.</p> <p>21 MR. HONIK: It seems to me with the</p> <p>22 last five questions --</p> <p>23 MR. GOLDBERG: If you want to continue</p> <p>24 in this way, we will conclude the deposition</p> <p>25 with a call to Judge Vanaskie.</p>
<p style="text-align: right;">Page 99</p> <p>1 is stated here. In my Paragraph 23 of my</p> <p>2 report, it says, "Reasons that the FDA deems a</p> <p>3 drug as misbranded include, but are not limited</p> <p>4 to:" and then it enumerates the specifics. I'd</p> <p>5 be happy to go on and provide those</p> <p>6 specifics --</p> <p>7 BY MR. GOLDBERG:</p> <p>8 Q So I'm asking you --</p> <p>9 MR. HONIK: Don't interrupt the</p> <p>10 witness. Don't interrupt the witness.</p> <p>11 BY MR. GOLDBERG:</p> <p>12 Q I would like you to --</p> <p>13 MR. GOLDBERG: I'm not interrupting</p> <p>14 her.</p> <p>15 MR. HONIK: Do not interrupt the</p> <p>16 witness.</p> <p>17 BY MR. GOLDBERG:</p> <p>18 Q I would like to you answer my</p> <p>19 question.</p> <p>20 MR. HONIK: If you persist in</p> <p>21 interrupting the witness in the middle of her</p> <p>22 responses, we will conclude the deposition.</p> <p>23 She was in the middle of her response.</p> <p>24 Ms. Moskowitz, can you please read</p> <p>25 back the question and the answer?</p>	<p style="text-align: right;">Page 101</p> <p>1 MR. HONIK: What the last five</p> <p>2 questions and responses revealed to me is your</p> <p>3 ignorance in understanding the witness, full</p> <p>4 stop. We will not proceed until and unless you</p> <p>5 allow the witness to complete her responses,</p> <p>6 even if you don't like them.</p> <p>7 Accordingly, I will ask the reporter</p> <p>8 to read the pending question and as much as</p> <p>9 Dr. Conti's response as she has so that she may</p> <p>10 complete her response. And then you should</p> <p>11 feel free to ask another question.</p> <p>12 Ms. Moskowitz?</p> <p>13 COURT REPORTER: Sure.</p> <p>14 (Whereupon, the answer was read back</p> <p>15 as requested.)</p> <p>16 MR. HONIK: Do you wish to complete</p> <p>17 your response, Dr. Conti, or have you lost your</p> <p>18 train of thought?</p> <p>19 THE WITNESS: I have not lost my train</p> <p>20 of thought, but I don't have to...</p> <p>21 So, again, I was asked to assume that</p> <p>22 these products were misbranded. "Misbranded"</p> <p>23 from the FDA's perspective has its very</p> <p>24 specific definition that's enumerated -- that's</p> <p>25 listed in Paragraph 23. And that -- that</p>



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<p style="text-align: right;">Page 102</p> <p>1 definition of "misbranded" is inclusive.</p> <p>2 BY MR. GOLDBERG:</p> <p>3 Q Let's try it like this: Which --</p> <p>4 which of these enumerated factors of misbranding</p> <p>5 apply to the at-issue products -- the at-issue</p> <p>6 valsartan products?</p> <p>7 MR. HONIK: Objection, asked and</p> <p>8 answered and outside the scope of her report.</p> <p>9 You may respond.</p> <p>10 THE WITNESS: I was asked to assume</p> <p>11 these products were misbranded, and -- and</p> <p>12 again, that the definition of "misbranded" was</p> <p>13 inclusive of all, but -- but not limited to</p> <p>14 these factors.</p> <p>15 BY MR. GOLDBERG:</p> <p>16 Q So you weren't asked to assume any</p> <p>17 particular fact -- any particular reason for</p> <p>18 misbranding. You were just asked to assume</p> <p>19 misbranding based on the definition of</p> <p>20 "misbranding"?</p> <p>21 MR. HONIK: Object to form, asked and</p> <p>22 answered.</p> <p>23 BY MR. GOLDBERG:</p> <p>24 Q And --</p> <p>25 COURT REPORTER: I'm sorry. I didn't</p>	<p style="text-align: right;">Page 104</p> <p>1 BY MR. GOLDBERG:</p> <p>2 Q So you were asked to assume the drugs</p> <p>3 were adulterated based on all of the different</p> <p>4 factors the FDA might consider a drug adulterated?</p> <p>5 MR. HONIK: Object to the form.</p> <p>6 BY MR. GOLDBERG:</p> <p>7 Q Those listed -- those listed here and</p> <p>8 those that are not listed here?</p> <p>9 MR. HONIK: Object to the form, asked</p> <p>10 and answered.</p> <p>11 THE WITNESS: Again, I was -- so any</p> <p>12 one of these factors can make a product</p> <p>13 adulterated in the view of the FDA, just like</p> <p>14 any one of these factors could be considered --</p> <p>15 would make a product misbranded, according to</p> <p>16 Paragraph 23 and -- and beyond.</p> <p>17 I was asked to assume that these</p> <p>18 products are considered to be adulterated and</p> <p>19 misbranded according to the FDA's definition,</p> <p>20 which is inclusive of all of the factors</p> <p>21 listed, both in my report and alluded to -- and</p> <p>22 alluded to as additional.</p> <p>23 BY MR. GOLDBERG:</p> <p>24 Q Let's turn back to Paragraph 6 of your</p> <p>25 report. It's on Page 3 of your report.</p>
<p style="text-align: right;">Page 103</p> <p>1 hear a response.</p> <p>2 THE WITNESS: Correct.</p> <p>3 COURT REPORTER: Thank you.</p> <p>4 BY MR. GOLDBERG:</p> <p>5 Q And if you -- if you look at the --</p> <p>6 the immediately preceding paragraph, Paragraph 22,</p> <p>7 you provide the reasons the FDA deems a drug</p> <p>8 adulterated, correct?</p> <p>9 A I -- no. That is not what the</p> <p>10 paragraph states. The paragraph states the reasons</p> <p>11 the FDA deems a drug adulterated to include, but not</p> <p>12 be limited to factors that are listed here.</p> <p>13 Q And is the same true with respect to</p> <p>14 adulteration, that you were asked to assume the</p> <p>15 drugs were adulterated based on the definition of</p> <p>16 "adulterated" as we see it here?</p> <p>17 MR. HONIK: Object to form.</p> <p>18 THE WITNESS: The FDA has a very</p> <p>19 specific definition of "adulteration," which is</p> <p>20 listed here, but again, it's inclusive. I was</p> <p>21 asked to assume that adulteration -- that the</p> <p>22 use of the term "adulteration" in the -- in the</p> <p>23 complaint is inclusive of these factors and the</p> <p>24 other factors that the FDA considers a product</p> <p>25 to be adulterated.</p>	<p style="text-align: right;">Page 105</p> <p>1 Here you say -- and I'm looking in the</p> <p>2 middle of the paragraph -- "Prescription drugs that</p> <p>3 are adulterated and misbranded are neither</p> <p>4 recognized by the United States government as</p> <p>5 legitimate products to be sold by manufacturers nor</p> <p>6 paid for by payors; nor are they considered</p> <p>7 legitimate products by the pharmaceutical industry."</p> <p>8 What do you mean by "legitimate</p> <p>9 products"?</p> <p>10 A I mean that a product that does not</p> <p>11 meet cGMP regulations cannot be entered into the</p> <p>12 legal class of trade into the United States</p> <p>13 pharmaceutical trade. That means that pharmacies</p> <p>14 can't sell products that don't meet cGMP practices</p> <p>15 and standards, and nor can -- and nor do payors pay</p> <p>16 for product --</p> <p>17 COURT REPORTER: And nor do payors...</p> <p>18 THE WITNESS: Pay for products that do</p> <p>19 not meet cGMP.</p> <p>20 BY MR. GOLDBERG:</p> <p>21 Q Is it -- is it the fact that there's a</p> <p>22 cGMP violation that makes the product not</p> <p>23 legitimate, or is it the fact that, as you put it,</p> <p>24 pharmacies wouldn't pay for it, that consumers</p> <p>25 wouldn't pay for it? What makes the product not</p>

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<p style="text-align: right;">Page 106</p> <p>1 legitimate?</p> <p>2 MR. HONIK: Object to form, asked an</p> <p>3 answered.</p> <p>4 THE WITNESS: Violation of cGMP.</p> <p>5 Remember -- and -- and also just to</p> <p>6 make sure that I understand your question,</p> <p>7 payors pay for products, consumers and</p> <p>8 insurers, right? Pharmacies may stock products</p> <p>9 for sale.</p> <p>10 BY MR. GOLDBERG:</p> <p>11 Q Is it your understanding that any cGMP</p> <p>12 violation would make a product not legitimate?</p> <p>13 MR. HONIK: Object to form, outside</p> <p>14 the scope of her report.</p> <p>15 You may answer.</p> <p>16 THE WITNESS: Manufacturers must</p> <p>17 attest to their compliance with cGMP practices</p> <p>18 in order to enter their products into the U.S.</p> <p>19 class of trade and then throughout the</p> <p>20 pharmaceutical supply chain, both as a</p> <p>21 condition of sale into the U.S. and then</p> <p>22 yearly.</p> <p>23 BY MR. GOLDBERG:</p> <p>24 Q Okay. Is it -- is it your</p> <p>25 understanding that any cGMP violation would make the</p>	<p style="text-align: right;">Page 108</p> <p>1 THE WITNESS: That is not my</p> <p>2 testimony, sir.</p> <p>3 BY MR. GOLDBERG:</p> <p>4 Q So a product that has a cGMP violation</p> <p>5 could be a legitimate product, in your view?</p> <p>6 MR. HONIK: Object to the form, asked</p> <p>7 and answered, beyond the scope.</p> <p>8 THE WITNESS: Again -- thank you.</p> <p>9 Again, pharmacy manufacturers cannot</p> <p>10 enter their products into the U.S. -- the</p> <p>11 closed U.S. chain of pharmaceutical products</p> <p>12 sold, bought, insured, consumed and -- by</p> <p>13 pharmacies, et cetera, if they do not meet</p> <p>14 cGMPs both upon launch -- they can't actually</p> <p>15 enter the U.S. market, and they can't sell over</p> <p>16 time unless they make the attestation that</p> <p>17 their products are cGMP compliant.</p> <p>18 BY MR. GOLDBERG:</p> <p>19 Q Is it your testimony that products</p> <p>20 produced by a manufacturer where there are cGMP</p> <p>21 violations cannot be sold in the U.S.?</p> <p>22 MR. HONIK: Object to the form, asked</p> <p>23 and answered.</p> <p>24 THE WITNESS: Okay. Again, a</p> <p>25 pharmaceutical manufacturer cannot --</p>
<p style="text-align: right;">Page 107</p> <p>1 product not legitimate?</p> <p>2 MR. HONIK: Object to form.</p> <p>3 BY MR. GOLDBERG:</p> <p>4 Q In your view?</p> <p>5 MR. HONIK: Object to form, asked and</p> <p>6 answered, beyond the scope.</p> <p>7 THE WITNESS: So, again -- again, my</p> <p>8 understanding is that pharmaceutical</p> <p>9 manufacturers that want to sell their product</p> <p>10 into the closed pharmaceutical chain in the</p> <p>11 United States must attest that their products</p> <p>12 meet cGMP. But when they first enter and</p> <p>13 launch into the market, that's a conditional on</p> <p>14 launch -- that their launch is conditional on</p> <p>15 that attestation. And then annually</p> <p>16 thereafter.</p> <p>17 THE COURT REPORTER: And then</p> <p>18 annually, they're...</p> <p>19 THE WITNESS: Thereafter.</p> <p>20 COURT REPORTER: Okay.</p> <p>21 BY MR. GOLDBERG:</p> <p>22 Q So it's your testimony that any cGMP</p> <p>23 violation would make a product not legitimate?</p> <p>24 MR. HONIK: Object to the form, asked</p> <p>25 and answered.</p>	<p style="text-align: right;">Page 109</p> <p>1 BY MR. GOLDBERG:</p> <p>2 Q My question is a yes or no question.</p> <p>3 MR. HONIK: You're interrupting the</p> <p>4 witness.</p> <p>5 MR. GOLDBERG: I am because my</p> <p>6 question is yes or no question.</p> <p>7 MR. HONIK: The witness is permitted</p> <p>8 to answer it in whatever manner she believes is</p> <p>9 appropriate. You have interrupted her.</p> <p>10 MR. GOLDBERG: Actually -- actually,</p> <p>11 that's not what happens under the rules in this</p> <p>12 case. If it's a yes or no question, the</p> <p>13 witness should say yes or no and then qualify</p> <p>14 their answer if need be.</p> <p>15 MR. HONIK: Yeah. Whatever you</p> <p>16 believe is -- is fine, Seth. You're not to</p> <p>17 interrupt her. If you persist in interrupting</p> <p>18 her, then we'll have to stop the deposition.</p> <p>19 But as far as I can see, you have asked her the</p> <p>20 same question a half dozen times. She's --</p> <p>21 she's being quite level with you in responding.</p> <p>22 I'm protecting the record.</p> <p>23 Madam reporter, let's have the</p> <p>24 question, and we'll have Dr. Conti answer it</p> <p>25 again.</p>



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<p style="text-align: right;">Page 110</p> <p>1 (Whereupon, the question was read back                  2 as requested.)                  3 MR. HONIK: And then I've noted my                  4 objection.                  5 You can respond, Dr. Conti.                  6 THE WITNESS: Thank you.                  7 Pharmaceutical manufacturers are not                  8 allowed to sell their products into the U.S.                  9 without meeting cGMP standards both upon their                  10 launch and over time. And just to be really                  11 clear, it is -- from -- from the                  12 U.S. regulator's perspective, it is on the                  13 manufacturer to ensure and to attest that they                  14 are manufacturing their products to the gold                  15 standard of cGMP that is -- as outlined by the                  16 U.S. Food and Drug Administration.                  17 BY MR. GOLDBERG:                  18 Q Is it -- do you -- is it your view                  19 that -- is it your understanding that any cGMP                  20 violation would prevent a manufacturer from selling                  21 the product in the case -- in the U.S.?                  22 MR. HONIK: Object to form, asked and                  23 answered and beyond the scope.                  24 You may respond.                  25 THE WITNESS: Again --</p>	<p style="text-align: right;">Page 112</p> <p>1 MR. GOLDBERG: Why don't we --                  2 THE WITNESS: I think there's a                  3 pending question. Would you like me the answer                  4 it?                  5 MR. GOLDBERG: No, I will withdraw                  6 that. I can withdraw that question.                  7 THE WITNESS: Okay. May I ask -- I'm                  8 not sure what time it is in the real world.                  9 MR. HONIK: It's 1:12 p.m. Is this a                  10 good time to break for lunch, Dr. Conti?                  11 MR. GOLDBERG: Sure.                  12 THE WITNESS: That would be great.                  13 Thank you.                  14 MR. HONIK: And for your comfort, how                  15 much time would you like?                  16 THE WITNESS: Can we have half an                  17 hour, please?                  18 MR. HONIK: Yes. So we'll resume at                  19 1:45.                  20 THE WITNESS: Thank you.                  21 THE VIDEOGRAPHER: The time is 1:13.                  22 This ends Media Unit Number 2. We're going off                  23 the record.                  24 (Whereupon, a lunch recess was taken.)                  25 THE VIDEOGRAPHER: The time is 1:53.</p>
<p style="text-align: right;">Page 111</p> <p>1 MR. GOLDBERG: When you say "beyond                  2 the scope" -- can I just get a clarification                  3 counsel? When you say "beyond the scope," what                  4 do you mean?                  5 MR. HONIK: Happily. You've                  6 established that Dr. Conti was retained to                  7 provide opinions and calculations regarding the                  8 injury and damages incurred by classes of                  9 consumers and end-payors in this matter.                  10 To do so, she was assigned -- she must                  11 assign an economic value to prescription drugs                  12 that were adulterated and misbranded, two terms                  13 that she's now defined for you, as outlined in                  14 the complaint. As such, she's not our cGMP                  15 expert. We have such an expert. He's been                  16 deposed. And I'm merely pointing out to you                  17 that if you want to drill down on cGMP                  18 standards beyond what Dr. Conti, as a health                  19 economist, needs to know, I think you're                  20 wasting time.                  21 But more importantly, it's beyond the                  22 scope of her expertise and her report, which                  23 you, yourself, established about two hours ago.                  24 That's the basis for my objection when                  25 I say "beyond the scope." Let's proceed.</p>	<p style="text-align: right;">Page 113</p> <p>1 This begins Media Unit Number 3. We're back on                  2 the record.                  3 BY MR. GOLDBERG:                  4 Q Dr. Conti, if you look at Paragraph 6                  5 of your report --                  6 A Just one second. Let me get it.                  7 Okay.                  8 Q The last sentence in this paragraph,                  9 you use the phrase, "non-product status." What do                  10 you mean by "non-product status"?                  11 A Only prescription drugs -- only                  12 products that have met the evidentiary standard for                  13 cGMP, in addition to safety and efficacy, are                  14 allowed to be sold into the U.S. market trade.                  15 So products that do not meet that                  16 standard of being manufactured to good manufacturing                  17 practices -- or according to good manufacturing                  18 practices, plus are safe and efficacious, are                  19 allowed to be sold into the -- into the U.S. product                  20 market. Those that do not meet that standard are                  21 not -- are not -- according -- according to the                  22 U.S. Food and Drug Administration, would be not                  23 allowed.                  24 Q When you use the terms "safety" and                  25 "efficacy," can you explain what you mean by the</p>

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<p style="text-align: right;">Page 114</p> <p>1 term -- by each of those terms?</p> <p>2 A All right. Again, this is a -- this</p> <p>3 is one of the most highly regulated consumer product</p> <p>4 markets, and so the FDA has very specific</p> <p>5 definitions of "safety" and "efficacy."</p> <p>6 What I mean here is that the product</p> <p>7 is judged to be safe and efficacious according to</p> <p>8 the U.S. Food and Drug Administration's rules.</p> <p>9 Q You don't have an independent</p> <p>10 understanding of safety and efficacy? It's just</p> <p>11 based on what the FDA would determine to be safe and</p> <p>12 effective?</p> <p>13 MR. HONIK: Object to the form.</p> <p>14 THE WITNESS: For my purposes in this</p> <p>15 report, correct. The definitions I'm using of</p> <p>16 safety and efficacy and meeting cGMP are those</p> <p>17 that relate to the</p> <p>18 Food and Drug Administration's definitions.</p> <p>19 BY MR. GOLDBERG:</p> <p>20 Q If you scroll down -- or if you go</p> <p>21 down to Paragraph 7 -- I know you have a hard copy</p> <p>22 in front of you. The last sentence of this</p> <p>23 paragraph, you say, "Prescription drugs that are</p> <p>24 adulterated and misbranded have no economic value.</p> <p>25 They are worthless."</p>	<p style="text-align: right;">Page 116</p> <p>1 efficacious as -- as attested to in the drug's</p> <p>2 manufacturing report to the</p> <p>3 Food and Drug Administration.</p> <p>4 BY MR. GOLDBERG:</p> <p>5 Q So products that have such an</p> <p>6 attestation have value, right?</p> <p>7 MR. HONIK: Object to form.</p> <p>8 THE WITNESS: You mischaracterized my</p> <p>9 testimony.</p> <p>10 BY MR. GOLDBERG:</p> <p>11 Q I'm asking you a question. Products</p> <p>12 that have the attestation you described have value,</p> <p>13 correct?</p> <p>14 MR. HONIK: Object to form.</p> <p>15 THE WITNESS: Okay. Again,</p> <p>16 prescription -- pharmaceutical manufacturers</p> <p>17 are not allowed to sell products into the U.S.</p> <p>18 market that are not produced in a manner of</p> <p>19 cGMP compliant, plus are safe and efficacious</p> <p>20 as judged by the Food and Drug Administration.</p> <p>21 There is a long and very complicated</p> <p>22 route for a product to be judged, a drug, a</p> <p>23 prescription drug, that is allowed to be</p> <p>24 entered into the U.S. class of trade.</p> <p>25 Manufacturers have to meet all of those</p>
<p style="text-align: right;">Page 115</p> <p>1 What do you mean by "worthless"?</p> <p>2 A I mean this is in --</p> <p>3 COURT REPORTER: You mean this in...</p> <p>4 THE WITNESS: Thank you.</p> <p>5 I mean this in -- in economic sense,</p> <p>6 that there is no legitimate supply curve of</p> <p>7 products -- of products that do not meet the</p> <p>8 standard of cGMP in addition to being --</p> <p>9 THE COURT REPORTER: In addition to</p> <p>10 being...</p> <p>11 THE WITNESS: Judged safe and</p> <p>12 efficacious by the</p> <p>13 Food and Drug Administration.</p> <p>14 BY MR. GOLDBERG:</p> <p>15 Q Is it -- is it your view that there's</p> <p>16 no degree of adulteration when it comes to</p> <p>17 worthlessness and that all adulterated drugs, for</p> <p>18 any reason, are worthless?</p> <p>19 MR. HONIK: Object to form.</p> <p>20 THE WITNESS: So my understanding is</p> <p>21 that in order to be allowed to be sold into the</p> <p>22 U.S. supply chain of prescription drugs, the</p> <p>23 manufacturer needs to attest that these</p> <p>24 products are manufactured according to cGMP, at</p> <p>25 minimum, and in addition, are safe and</p>	<p style="text-align: right;">Page 117</p> <p>1 standards, both in terms of attestation -- in</p> <p>2 other words, they can say these things, but</p> <p>3 they -- but they are also judged by the</p> <p>4 regulator itself about whether or not these</p> <p>5 things are actually --</p> <p>6 THE COURT REPORTER: Are actually...</p> <p>7 THE WITNESS: True.</p> <p>8 BY MR. GOLDBERG:</p> <p>9 Q So products that are sold with that</p> <p>10 attestation have value?</p> <p>11 MR. HONIK: Object to form, asked and</p> <p>12 answered.</p> <p>13 THE WITNESS: Okay. Again, it's not</p> <p>14 just the attestation that matters. The U.S.</p> <p>15 regulator requires that any products that want</p> <p>16 to be sold into the U.S. market that is going</p> <p>17 to be considered a prescription drug, must be</p> <p>18 produced in accordance with cGMP and be safe</p> <p>19 and efficacious. And the manufacturer just --</p> <p>20 can't just say that. They actually have to</p> <p>21 prove it to the regulator.</p> <p>22 It is in that meaning that I mean that</p> <p>23 those products have value. In other words,</p> <p>24 products that -- I can say it in a different</p> <p>25 way, which is products have value. There is a</p>

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<p style="text-align: right;">Page 118</p> <p>1 legitimate supply curve if and only if they are</p> <p>2 produced according to cGMP and are safe and</p> <p>3 efficacious, both by attestation and by</p> <p>4 proof -- by empirical proof.</p> <p>5 BY MR. GOLDBERG:</p> <p>6 Q If the FDA is permitting those</p> <p>7 products to be sold, they have value?</p> <p>8 A For prescription drugs, drugs that are</p> <p>9 actually called "drugs" by the</p> <p>10 Food and Drug Administration, they -- and are sold</p> <p>11 at pharmacies, and dispensed to American patients by</p> <p>12 physicians or by pharmacy chains, those products</p> <p>13 must meet the evidentiary standard of, they are</p> <p>14 produced according to cGMP, they are not adulterated</p> <p>15 or misbranded, and they are safe and efficacious,</p> <p>16 for the -- for the disease -- specific indication</p> <p>17 that the Food and Drug Administration approves that</p> <p>18 product for.</p> <p>19 COURT REPORTER: I'm sorry. The</p> <p>20 Food and Drug Administration...</p> <p>21 THE WITNESS: Approves that product to</p> <p>22 be sold for or used for.</p> <p>23 BY MR. GOLDBERG:</p> <p>24 Q So if the FDA has permitted --</p> <p>25 if -- permitted prescription drugs to be sold at</p>	<p style="text-align: right;">Page 120</p> <p>1 hold on. It's actually on the manufacturer to</p> <p>2 ensure that that product is what it says it is on</p> <p>3 the product's -- on the product's label.</p> <p>4 BY MR. GOLDBERG:</p> <p>5 Q Okay. So you -- you seem to be</p> <p>6 emphasizing the word "enter." Is there some</p> <p>7 particular emphasis you're putting on that?</p> <p>8 A I don't -- I'm not sure what you mean</p> <p>9 by that question.</p> <p>10 Q You keep saying the FDA will not</p> <p>11 allow -- a manufacturer cannot -- you -- you -- what</p> <p>12 you said is drugs cannot enter into the U.S. class</p> <p>13 of trade without meeting the evidentiary standard.</p> <p>14 What do you mean by "enter into the U.S. class of</p> <p>15 trade"?</p> <p>16 A I mean they are not allowed to be sold</p> <p>17 into the U.S. market without meeting the evidentiary</p> <p>18 standard of being produced, at minimum, by cGMP and</p> <p>19 meeting other evidentiary standards, as well.</p> <p>20 Q So what are the evidentiary standards</p> <p>21 that you're referring to? You have cGMP violations.</p> <p>22 A I'm confused.</p> <p>23 Q You used the phrase "evidentiary</p> <p>24 standard" in the four -- in your last four answers.</p> <p>25 What are the evidentiary standards you're referring</p>
<p style="text-align: right;">Page 119</p> <p>1 pharmacies, you would agree that those drugs have a</p> <p>2 value?</p> <p>3 MR. HONIK: Object to form, asked and</p> <p>4 answered.</p> <p>5 THE WITNESS: Well, wait. So it's not</p> <p>6 just that. So again, according to the</p> <p>7 regulator, a prescription drug is not allowed</p> <p>8 to enter into the U.S. class of trade, sold to</p> <p>9 a consumer, covered by a manufacturer -- or by</p> <p>10 an insurer, unless they meet the evidentiary</p> <p>11 standard of -- of being produced in accordance</p> <p>12 with cGMP at a minimum, and meet other</p> <p>13 requirements, as well.</p> <p>14 BY MR. GOLDBERG:</p> <p>15 Q Are you aware of any instance where a</p> <p>16 drug was sold, but it did not meet the minimum, as</p> <p>17 you put it, cGMP requirements?</p> <p>18 A Again, drugs cannot enter into the</p> <p>19 U.S. class of trade without meeting the evidentiary</p> <p>20 standard. What I mean by that is the FDA will not</p> <p>21 approve a drug to enter into the U.S. class of trade</p> <p>22 without meeting the evidentiary standard and the</p> <p>23 manufacturer attesting that they are meeting that</p> <p>24 standard.</p> <p>25 It is actually on the manufacturer --</p>	<p style="text-align: right;">Page 121</p> <p>1 to?</p> <p>2 MR. HONIK: Object to form, asked and</p> <p>3 answered and beyond the scope of her report.</p> <p>4 THE WITNESS: Okay. So you can look</p> <p>5 at Paragraph 6 of my report, "Federal law, as</p> <p>6 codified by regulations of the</p> <p>7 Food and Drug Administration, mandates that</p> <p>8 prescription drugs be produced in accordance</p> <p>9 with cGMP to ensure that the drugs meet the</p> <p>10 legal requirements of safety and that they have</p> <p>11 the quality, purity, identity and strength they</p> <p>12 are represented to conduct."</p> <p>13 That's what I mean by the evidentiary</p> <p>14 standard of being sold into the U.S. or being</p> <p>15 legitimate products.</p> <p>16 BY MR. GOLDBERG:</p> <p>17 Q Let's take each one of those. What do</p> <p>18 you understand the term "quality," as you've used</p> <p>19 it, to mean?</p> <p>20 A Quality is a process, from the</p> <p>21 U.S. Food and Drug Administration's perspective, so</p> <p>22 the print is both what it says it is, but it's also</p> <p>23 manufactured in a process that is a quality</p> <p>24 manufacturing process that meets cGMP.</p> <p>25 Q What do you understand the term</p>

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<p style="text-align: right;">Page 122</p> <p>1 "purity" to mean, as you're using it?</p> <p>2 A I mean, again, it's in accordance with</p> <p>3 the Food and Drug Administration's definition of it.</p> <p>4 So purity, identity and strength are all the FDA's</p> <p>5 definition.</p> <p>6 Q Okay. You're -- so you're -- when</p> <p>7 you're using the term, you're really -- you're just</p> <p>8 saying based on how the FDA defines these terms?</p> <p>9 A Yes.</p> <p>10 Q Correct?</p> <p>11 A Exactly. Just like my use of the term</p> <p>12 "adulterated," my use of the term "misbranded," they</p> <p>13 are all related to the U.S. government's definition</p> <p>14 inclusive of how these terms are actually being --</p> <p>15 being used.</p> <p>16 Q How these terms are being written in</p> <p>17 the regulations, that's what you're referring to?</p> <p>18 A Correct.</p> <p>19 Q I still want to understand. If a</p> <p>20 drug -- if a prescription drug is being sold -- so</p> <p>21 there's a supply for it. And people are buying it,</p> <p>22 so there's a demand for it. Does it -- is it still</p> <p>23 worthless if it doesn't meet some of these</p> <p>24 evidentiary standards?</p> <p>25 MR. HONIK: Object to form.</p>	<p style="text-align: right;">Page 124</p> <p>1 And I am just confirming. So you're</p> <p>2 not thinking about it in terms of demand, you're</p> <p>3 thinking about it in terms of supply?</p> <p>4 A What is "it" in your question?</p> <p>5 Q The -- the question of whether the</p> <p>6 drug is -- a drug is worthless?</p> <p>7 A So, again, from an economic</p> <p>8 perspective, there is no legitimate supply curve for</p> <p>9 a product that is adulterated and misbranded. That</p> <p>10 is by statute. Consumers can demand products that</p> <p>11 are illegal or illegitimate, but they're -- but a</p> <p>12 pharmacy can't sell a product that does not -- for</p> <p>13 which the manufacturer has not met the evidentiary</p> <p>14 standard and have been approved by the U.S.</p> <p>15 regulator for use in that -- in that context.</p> <p>16 Q Do you have any -- I don't see it</p> <p>17 here. Did you cite to any economic treatise for the</p> <p>18 notion that if there is -- there is no legitimate</p> <p>19 supply curve for a product that is adulterated and</p> <p>20 misbranded?</p> <p>21 A This is one of the most -- one of the</p> <p>22 most highly regulated consumer product markets</p> <p>23 that -- that exists in the United States. U.S.</p> <p>24 is -- maintains the gold standard for quality of its</p> <p>25 prescription drug supply.</p>
<p style="text-align: right;">Page 123</p> <p>1 THE WITNESS: My statement is one</p> <p>2 related to the supply curve, not the demand</p> <p>3 curve. By definition, there is no supply of</p> <p>4 drugs -- of product that do not meet the</p> <p>5 definition of a "drug" according to the</p> <p>6 Food and Drug Administration. In order for a</p> <p>7 manufacturer to sell a product that meets the</p> <p>8 definition of the term "drug," it must meet the</p> <p>9 evidentiary standards of meeting and attesting</p> <p>10 to the cGMP production and be safe and</p> <p>11 efficacious for the indicated use.</p> <p>12 BY MR. GOLDBERG:</p> <p>13 Q So the demand -- you're -- you're not</p> <p>14 considering demand in that analysis, you're focusing</p> <p>15 on --</p> <p>16 THE COURT REPORTER: Can you repeat</p> <p>17 that question, please?</p> <p>18 BY MR. GOLDBERG:</p> <p>19 Q You're not considering demand in your</p> <p>20 analysis, you're focusing on the supply?</p> <p>21 A In my analysis, I don't know what you</p> <p>22 mean by my -- "in my analysis."</p> <p>23 Q You said, "My statement is related to</p> <p>24 the supply curve, not the demand curve. By</p> <p>25 definition, there is no supply of drugs."</p>	<p style="text-align: right;">Page 125</p> <p>1 Every pharmaceutical manufacturer that</p> <p>2 sells products through to pharmacies and ultimately</p> <p>3 to American consumers, knows what the rules are.</p> <p>4 The rules are they must meet the evidentiary</p> <p>5 standard of permitting to quality manufacturing and</p> <p>6 be safe and efficacious.</p> <p>7 From an economic standpoint, that --</p> <p>8 it is meeting those regulations that allow there to</p> <p>9 be a supply of a product. I don't need to -- you</p> <p>10 can't think about the supply curve of prescription</p> <p>11 drugs without understanding what the regulation is</p> <p>12 that allows them to be sold to the U.S. That's</p> <p>13 your -- that's actually health economics 101.</p> <p>14 Q Well, I'm trying to understand which</p> <p>15 health economics 101 treatise or authority you're</p> <p>16 citing for the notion that -- because in your view,</p> <p>17 there's no legitimate supply curve, a drug is</p> <p>18 worthless?</p> <p>19 MR. HONIK: Object to form, asked and</p> <p>20 answered.</p> <p>21 I'm sorry. Please answer, Dr. Conti.</p> <p>22 THE WITNESS: Thank you.</p> <p>23 It's not my view. This is the U.S.</p> <p>24 regulator's perspective. The U.S. regulator</p> <p>25 does not -- does not view -- does not allow</p>

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<p style="text-align: right;">Page 126</p> <p>1 drugs to be sold into the U.S. market that do</p> <p>2 not meet the evidentiary standard. And it's</p> <p>3 prescription drug manufacturers themselves that</p> <p>4 have wanted that standard to be as it is.</p> <p>5 And so I -- I mean, there's plenty of</p> <p>6 published literature that talks about this, the</p> <p>7 importance of the evidentiary standard to the</p> <p>8 supply of these products, and I cite some of</p> <p>9 that in my report. But every pharmaceutical</p> <p>10 manufacturer that is allowed to sell into the</p> <p>11 U.S. market knows what the standard is.</p> <p>12 BY MR. GOLDBERG:</p> <p>13 Q You're -- you're not answering my</p> <p>14 question. My question is what economic support do</p> <p>15 you have for the notion that, if there's no supply,</p> <p>16 the drug is worthless?</p> <p>17 MR. HONIK: Object to the form, asked</p> <p>18 and answered.</p> <p>19 THE WITNESS: This is economics 101.</p> <p>20 If you go -- I'm more than happy to show you</p> <p>21 the picture. But there can be no price for a</p> <p>22 product that does not have a demand curve</p> <p>23 meeting a supply curve. There is no economic</p> <p>24 price if there is no legitimate supply curve.</p> <p>25 There are plenty of economic textbooks</p>	<p style="text-align: right;">Page 128</p> <p>1 counsel, don't coach the witness. Don't</p> <p>2 interfere.</p> <p>3 MR. HONIK: This witness needs to be</p> <p>4 heard --</p> <p>5 MR. GOLDBERG: Counsel, don't say a</p> <p>6 word. The question is pending. Witness will</p> <p>7 answer without your interruption. If you want</p> <p>8 to say objection, you can say objection.</p> <p>9 MR. HONIK: I will say as many words</p> <p>10 as I deem appropriate --</p> <p>11 MR. GOLDBERG: If you want to say</p> <p>12 objection to form, say it, but don't --</p> <p>13 MR. HONIK: I will protect the record</p> <p>14 in the manner in which I see fit.</p> <p>15 MR. GOLDBERG: No. You will interfere</p> <p>16 with the record.</p> <p>17 MR. HONIK: What I'm -- what I'm now</p> <p>18 trying to do, because I believe you've asked</p> <p>19 the witness the same exact question 6, 7, maybe</p> <p>20 10 times, is to clarify. And if -- and if</p> <p>21 you're asking a different question, then</p> <p>22 perhaps she can answer it differently. I'm</p> <p>23 simply trying to move things along.</p> <p>24 Is your question whether or not</p> <p>25 consumers, during the relevant period that</p>
<p style="text-align: right;">Page 127</p> <p>1 that explain that an economic price is related</p> <p>2 to both demand and supply, and its -- and, you</p> <p>3 know, its relationship to each other.</p> <p>4 BY MR. GOLDBERG:</p> <p>5 Q Was it -- there was an economic --</p> <p>6 there was an economic price that was paid for</p> <p>7 valsartan between 2012 and 2018, right?</p> <p>8 MR. HONIK: Object to the form. Are</p> <p>9 you asking if consumers paid for it, paid for</p> <p>10 this drug?</p> <p>11 THE WITNESS: I don't understand what</p> <p>12 you're asking.</p> <p>13 MR. GOLDBERG: Counsel --</p> <p>14 BY MR. GOLDBERG:</p> <p>15 Q I'm using your phrase, "economic</p> <p>16 price." There was an economic price paid for</p> <p>17 valsartan between 2012 and 2018, right?</p> <p>18 MR. HONIK: Right. And our lawsuit</p> <p>19 seeks --</p> <p>20 MR. GOLDBERG: Counsel, you're not --</p> <p>21 counsel, don't testify. Don't interrupt. Let</p> <p>22 the witness answer the question.</p> <p>23 MR. HONIK: You have now asked the</p> <p>24 same question six times.</p> <p>25 MR. GOLDBERG: Counsel, don't --</p>	<p style="text-align: right;">Page 129</p> <p>1 you've now raised, actually --</p> <p>2 MR. GOLDBERG: I want to ask my</p> <p>3 question. Don't ask my question.</p> <p>4 MR. HONIK: I know. I'm not --</p> <p>5 MR. GOLDBERG: No, stop. Ruben, stop.</p> <p>6 It's improper, and stop.</p> <p>7 MR. HONIK: Here is what we're going</p> <p>8 to do.</p> <p>9 MR. GOLDBERG: Stop it.</p> <p>10 MR. HONIK: Here's what we're going to</p> <p>11 do. Here's what we're going to do.</p> <p>12 MR. GOLDBERG: Tell me what we're</p> <p>13 going to do.</p> <p>14 MR. HONIK: If you persist in asking</p> <p>15 the same question again, then we will have to</p> <p>16 stop. I think the witness has responded -- I</p> <p>17 think the witness has responded completely to</p> <p>18 your question. You seem not to understand --</p> <p>19 MR. GOLDBERG: The objection is asked</p> <p>20 and answered. If that's your objection, say</p> <p>21 it.</p> <p>22 MR. HONIK: Is there a pending</p> <p>23 question?</p> <p>24 BY MR. GOLDBERG:</p> <p>25 Q Dr. Conti -- Dr. Conti, there was an</p>



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<p style="text-align: right;">Page 130</p> <p>1 economic price that was paid for valsartan between                  2 2012 and 2018, correct?                  3 MR. HONIK: Object to form, asked and                  4 answered.                  5 THE WITNESS: Okay. Again, let's                  6 start at the beginning. From my perspective,                  7 prospectively, there may be a demand curve for                  8 products that exist that cannot be met by a                  9 legitimate supply curve. In -- you can't get                  10 an economic price if there is not both a demand                  11 curve and a legitimate supply curve.                  12 In this matter, I was asked to assume                  13 that these products at issue between 2012 and                  14 2018 were adulterated and misbranded according                  15 to the Food and Drug Administration's                  16 definition.                  17 By definition, if they were both                  18 adulterated and misbranded, there is no                  19 legitimate supply curve. And therefore, demand                  20 and supply cannot meet, and there cannot be an                  21 economic price.                  22 BY MR. GOLDBERG:                  23 Q But demand and supply did meet, and an                  24 economic price was paid for valsartan between 2012                  25 and 2018, wasn't there?</p>	<p style="text-align: right;">Page 132</p> <p>1 THE WITNESS: Again, I was asked to                  2 assume that that supply was adulterated and                  3 misbranded.                  4 BY MR. GOLDBERG:                  5 Q So the answer is, yes, there was a                  6 supply? Leaving aside your assumptions, you agree                  7 there was a supply of valsartan between 2012 and                  8 2018?                  9 MR. HONIK: Object to the form, asked                  10 and answered.                  11 THE WITNESS: I think what you're                  12 asking is whether Diovan and Exforge, the                  13 brand -- the branded products, plus the generic                  14 drugs, were available to the U.S. market, were                  15 available --                  16 THE COURT REPORTER: I'm sorry. You                  17 cut out, Doctor.                  18 Were available to...                  19 THE WITNESS: To be purchased in the                  20 U.S. supply chain between 2012 and 2018. If                  21 that is your question, then the answer is yes.                  22 BY MR. GOLDBERG:                  23 Q Okay. And between 2012 and 2018,                  24 valsartan -- that valsartan was purchased by                  25 consumers and third-party payors, right?</p>
<p style="text-align: right;">Page 131</p> <p>1 MR. HONIK: Object to the form, asked                  2 and answered.                  3 Go ahead, Dr. Conti. You can explain                  4 it again.                  5 THE WITNESS: Again, consumers and                  6 payors did not know that these products were                  7 adulterated and misbranded during the relevant                  8 time period. That's because, as I understand                  9 it, the manufacturers, who are the defendants                  10 in this case, were attesting that these                  11 products were meeting the evidentiary standard                  12 when they were not.                  13 From my perspective in -- in analyzing                  14 this market, if I assume that these products                  15 are misbranded and adulterated, then there is                  16 no legitimate supply curve. And therefore,                  17 there is no meeting of demand and supply and no                  18 economic price.                  19 BY MR. GOLDBERG:                  20 Q There was a supply for these drugs                  21 between 2012 and 2018. You don't dispute that, do                  22 you?                  23 MR. HONIK: Object to the form, asked                  24 and answered.                  25 Go ahead.</p>	<p style="text-align: right;">Page 133</p> <p>1 A So consumers purchased Diovan and                  2 Exforge and it's generic equivalents during that                  3 time period. The at-issue drugs, I was asked to                  4 assume were adulterated and misbranded during that                  5 time period.                  6 Q Do you have experience assessing the                  7 clinical value of drugs?                  8 A As an economist? Yes. As a doctor,                  9 sadly, no.                  10 Q Got you.                  11 Have you conducted any clinical trials                  12 with respect to drug -- to drugs, pharmaceutical                  13 drugs?                  14 A Have I conducted any clinical trials?                  15 I have been involved in clinical trials that                  16 have -- that are conducted --                  17 THE COURT REPORTER: That are                  18 conducted...                  19 THE WITNESS: On prescription drugs.                  20 BY MR. GOLDBERG:                  21 Q Have you reviewed the -- the -- strike                  22 that.                  23 You understand that valsartan is -- an                  24 intended use of valsartan is to treat hypertension,                  25 right?</p>

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<p style="text-align: right;">Page 134</p> <p>1 A Yes. I mean, it is a member of a</p> <p>2 class of drug -- of a therapeutic class of drugs</p> <p>3 that are all intended to treat hypertension.</p> <p>4 Q And another intended use of valsartan</p> <p>5 is to treat heart failure?</p> <p>6 A I don't know that specifically.</p> <p>7 Q Are you aware that, if left untreated,</p> <p>8 high blood pressure can lead to heart attacks?</p> <p>9 MR. HONIK: Objection, outside the</p> <p>10 scope.</p> <p>11 THE WITNESS: I mean, like, as an</p> <p>12 American citizen who's relatively well</p> <p>13 informed, yes, I understand that.</p> <p>14 BY MR. GOLDBERG:</p> <p>15 Q Okay. And -- yeah, I'm looking for</p> <p>16 your understanding as Dr. Conti, whether that's in</p> <p>17 your individual capacity as an expert. But you</p> <p>18 understand that high blood pressure, if left</p> <p>19 untreated, can lead to heart attacks, right?</p> <p>20 A Yes. And I understand that there are</p> <p>21 many, many treatments to prevent heart attacks</p> <p>22 available.</p> <p>23 Q And if left untreated, high blood</p> <p>24 pressure can lead to strokes?</p> <p>25 MR. HONIK: Same objection, outside</p>	<p style="text-align: right;">Page 136</p> <p>1 the past two decades with the advent of stents,</p> <p>2 but also the advent of many prescription drugs</p> <p>3 that support their prevention and treatment.</p> <p>4 BY MR. GOLDBERG:</p> <p>5 Q There would be medical expenses</p> <p>6 attributable to a heart attack for most consumers,</p> <p>7 right?</p> <p>8 MR. HONIK: Same objection.</p> <p>9 THE WITNESS: Are you saying as a</p> <p>10 general matter that -- that heart attacks</p> <p>11 entail costs?</p> <p>12 BY MR. GOLDBERG:</p> <p>13 Q Yes.</p> <p>14 A Yes, definitively.</p> <p>15 Q And the same -- the same is true for</p> <p>16 strokes?</p> <p>17 A The primary prevention and treatment</p> <p>18 of strokes costs money.</p> <p>19 COURT REPORTER: It what?</p> <p>20 THE WITNESS: In the U.S.</p> <p>21 COURT REPORTER: I'm sorry. The</p> <p>22 primary prevention...</p> <p>23 THE WITNESS: And treatment of strokes</p> <p>24 in the U.S. costs money.</p> <p>25 COURT REPORTER: Thank you.</p>
<p style="text-align: right;">Page 135</p> <p>1 the scope of her report.</p> <p>2 THE WITNESS: Thank you.</p> <p>3 Again, I understand as, a general</p> <p>4 matter, that -- that high blood pressure is a</p> <p>5 risk factor for stroke and that high blood</p> <p>6 pressure can be treated in many different ways.</p> <p>7 BY MR. GOLDBERG:</p> <p>8 Q And if somebody has a heart attack,</p> <p>9 that can require hospitalization?</p> <p>10 MR. HONIK: Same objection.</p> <p>11 THE WITNESS: Yes. My mother had a</p> <p>12 heart attack, and she was hospitalized. I am</p> <p>13 generally aware of the facts.</p> <p>14 BY MR. GOLDBERG:</p> <p>15 Q And if somebody has a stroke, it can</p> <p>16 require hospitalization?</p> <p>17 MR. HONIK: Same objection.</p> <p>18 THE WITNESS: Yes. But again, there</p> <p>19 are many treatments -- I mean, we are so</p> <p>20 fortunate in the U.S. that there are so many</p> <p>21 treatments that prevent heart attack and</p> <p>22 strokes now from progressing to the point of</p> <p>23 requiring hospitalization or even, more</p> <p>24 tragically, death now. Deaths from strokes and</p> <p>25 heart attacks have dramatically come down over</p>	<p style="text-align: right;">Page 137</p> <p>1 BY COURT REPORTER:</p> <p>2 Q You'd agree that avoiding the</p> <p>3 complications from untreated hypertension could</p> <p>4 provide a value to a patient?</p> <p>5 MR. HONIK: Objection, outside the</p> <p>6 scope.</p> <p>7 THE WITNESS: As a general matter?</p> <p>8 BY MR. GOLDBERG:</p> <p>9 Q Yeah.</p> <p>10 A I think a lot of Americans would view</p> <p>11 the primary prevention and treatment of underlying</p> <p>12 conditions to prevent strokes and heart attacks is</p> <p>13 of value. I mean, I certainly view that as</p> <p>14 valuable.</p> <p>15 Q So if valsartan were treating</p> <p>16 someone's hypertension and that person, as a result,</p> <p>17 was avoiding a heart attack or a stroke because of</p> <p>18 their valsartan, that would be a value to that</p> <p>19 consumer?</p> <p>20 MR. HONIK: Object to form.</p> <p>21 THE WITNESS: That has therapeutic</p> <p>22 value. It doesn't have economic value from my</p> <p>23 reports on that.</p> <p>24 BY MR. GOLDBERG:</p> <p>25 Q So the consumer would get a</p>



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<p style="text-align: right;">Page 138</p> <p>1 therapeutic benefit from the treatment of</p> <p>2 valsartan -- their treatment with valsartan?</p> <p>3 MR. HONIK: Object to the form,</p> <p>4 outside the scope.</p> <p>5 THE WITNESS: Yeah. I think that's a</p> <p>6 good question.</p> <p>7 So, again, from the perspective of my</p> <p>8 report, I was asked to assume that the</p> <p>9 valsartan products at issue were adulterated</p> <p>10 and misbranded, and therefore, they should not</p> <p>11 have entered into the U.S. class of trade.</p> <p>12 Whether those products provided</p> <p>13 therapeutic value is -- is not of -- it's</p> <p>14 not -- it doesn't matter for the purposes of my</p> <p>15 calculation.</p> <p>16 BY MR. GOLDBERG:</p> <p>17 Q Well, do you dispute that those</p> <p>18 products provided therapeutic value?</p> <p>19 MR. HONIK: Object to the form, asked</p> <p>20 and answered, outside the scope.</p> <p>21 THE WITNESS: I don't know. I</p> <p>22 don't -- I don't have an opinion. You know, as</p> <p>23 an economist, I don't have an opinion.</p> <p>24 BY MR. GOLDBERG:</p> <p>25 Q Are you aware of any studies showing</p>	<p style="text-align: right;">Page 140</p> <p>1 COURT REPORTER: Of no moment.</p> <p>2 M-o-m-e-n-t? Moment.</p> <p>3 THE WITNESS: Yes.</p> <p>4 THE COURT REPORTER: Thank you. Thank</p> <p>5 you.</p> <p>6 BY MR. GOLDBERG:</p> <p>7 Q Is it your testimony that positive</p> <p>8 health outcomes have no economic value to consumers?</p> <p>9 MR. HONIK: Object to the form, asked</p> <p>10 and answered, outside the scope.</p> <p>11 THE WITNESS: That is not my</p> <p>12 testimony, sir.</p> <p>13 BY MR. GOLDBERG:</p> <p>14 Q Do you agree that positive health</p> <p>15 outcomes can have economic value to consumers?</p> <p>16 MR. HONIK: Same objection.</p> <p>17 THE WITNESS: That is not my</p> <p>18 testimony, sir.</p> <p>19 BY MR. GOLDBERG:</p> <p>20 Q Do you agree that positive outcomes,</p> <p>21 health outcomes, can have economic value to</p> <p>22 consumers, yes or no?</p> <p>23 MR. HONIK: Same objection, asked and</p> <p>24 answered.</p> <p>25 THE WITNESS: Of what, sir?</p>
<p style="text-align: right;">Page 139</p> <p>1 that between 2012 and 2018, valsartan was not</p> <p>2 effective in treating hypertension?</p> <p>3 MR. HONIK: Object to the form, beyond</p> <p>4 the scope.</p> <p>5 THE WITNESS: No. But it's -- again,</p> <p>6 has no moment, in my analysis, because again, I</p> <p>7 was asked to assume that those products at</p> <p>8 issue were misbranded and adulterated, and</p> <p>9 therefore would not have entered into the U.S.</p> <p>10 class of trade.</p> <p>11 BY MR. GOLDBERG:</p> <p>12 Q Are you aware of any warnings by the</p> <p>13 FDA between 2012 and 2018 that patients shouldn't</p> <p>14 take valsartan because it's not effective in</p> <p>15 treating hypertension?</p> <p>16 MR. HONIK: Object to form, outside</p> <p>17 the scope.</p> <p>18 THE WITNESS: So, again, it's of no</p> <p>19 moment -- moment in my analysis and my</p> <p>20 assignment in this case.</p> <p>21 THE COURT REPORTER: What word are you</p> <p>22 using? Moment?</p> <p>23 THE WITNESS: It's no moment.</p> <p>24 MR. HONIK: It's of no moment, she</p> <p>25 said.</p>	<p style="text-align: right;">Page 141</p> <p>1 BY MR. GOLDBERG:</p> <p>2 Q Do you agree that controlled</p> <p>3 hypertension due to valsartan could have economic</p> <p>4 value to a consumer?</p> <p>5 A Same objection.</p> <p>6 THE WITNESS: I think I'm gonna -- I</p> <p>7 think I'm gonna ask just -- you to clarify.</p> <p>8 So do you mean that prescription-based</p> <p>9 control of hypertension could have value to</p> <p>10 consumers?</p> <p>11 BY MR. GOLDBERG:</p> <p>12 Q Yes.</p> <p>13 A There's my -- my -- my point is</p> <p>14 there's lots of -- I mean, my understanding is</p> <p>15 there's lots of ways that consumers can control</p> <p>16 their hypertension that go well beyond the</p> <p>17 availability of prescription valsartan.</p> <p>18 Q But my question dealt with</p> <p>19 prescription valsartan.</p> <p>20 A Okay.</p> <p>21 Q Yes or no, if prescription valsartan</p> <p>22 were controlling a patient's hypertension, could</p> <p>23 that provide economic value to the patient?</p> <p>24 MR. HONIK: Objection to form, asked</p> <p>25 and answered, outside the scope.</p>

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<p style="text-align: right;">Page 142</p> <p>1 THE WITNESS: What do you mean by</p> <p>2 "economic value"?</p> <p>3 (Whereupon, there was a speaking</p> <p>4 interruption.)</p> <p>5 THE WITNESS: I'm sorry --</p> <p>6 THE COURT REPORTER: I'm sorry, who's</p> <p>7 speaking?</p> <p>8 MR. HONIK: There was a question and</p> <p>9 objection and a partial answer from the</p> <p>10 witness. Did you get any of that?</p> <p>11 THE COURT REPORTER: Yes.</p> <p>12 MR. HONIK: Okay. Great.</p> <p>13 THE WITNESS: And there was, like,</p> <p>14 something -- someone else started speaking.</p> <p>15 MR. HONIK: And then someone</p> <p>16 interjected.</p> <p>17 THE WITNESS: Correct. In the middle</p> <p>18 of my answer.</p> <p>19 MR. HONIK: Okay. So other than Seth,</p> <p>20 everyone -- and myself, everyone should be</p> <p>21 muted.</p> <p>22 BY MR. GOLDBERG:</p> <p>23 Q Let me ask the question again.</p> <p>24 Yes or no, prescription valsartan,</p> <p>25 when controlling a patient's hypertension, could</p>	<p style="text-align: right;">Page 144</p> <p>1 MR. HONIK: Don't interrupt her.</p> <p>2 THE WITNESS: I'm going to ask again.</p> <p>3 I don't understand how you're using the term</p> <p>4 "economic value."</p> <p>5 BY MR. GOLDBERG:</p> <p>6 Q If a patient saved money on their</p> <p>7 health expenses because of their treatment with</p> <p>8 at-issue valsartan products, would that have</p> <p>9 provided economic value to the patient?</p> <p>10 MR. HONIK: Is there a question?</p> <p>11 MR. GOLDBERG: That is the question.</p> <p>12 Should I ask it again?</p> <p>13 MR. HONIK: No, Jamie can read it, and</p> <p>14 we can all determine if it's a question. It</p> <p>15 sounded like a statement.</p> <p>16 But, Jamie, can you read it back.</p> <p>17 MR. GOLDBERG: I'm going to</p> <p>18 read -- I'm going to read the question.</p> <p>19 BY MR. GOLDBERG:</p> <p>20 Q If a patient saved money on their</p> <p>21 health expenses because of their treatment with</p> <p>22 at-issue valsartan products, would that have</p> <p>23 provided an economic value to the patient?</p> <p>24 MR. HONIK: Object to form, beyond the</p> <p>25 scope, asked and answered.</p>
<p style="text-align: right;">Page 143</p> <p>1 that provide an economic value to the patient?</p> <p>2 MR. HONIK: Object to form, asked and</p> <p>3 answered, beyond the scope.</p> <p>4 You can answer.</p> <p>5 THE WITNESS: Thank you. Seth --</p> <p>6 Mr. Goldberg, what do you mean by "economic</p> <p>7 value" in that question?</p> <p>8 BY MR. GOLDBERG:</p> <p>9 Q Well, before you had said that that</p> <p>10 kind of control would provide a therapeutic benefit,</p> <p>11 not an economic value. And I'm just asking -- you</p> <p>12 used the phrase "economic value." What do you</p> <p>13 understand it to mean?</p> <p>14 MR. HONIK: Object to the form.</p> <p>15 THE WITNESS: Okay. Again, I -- we</p> <p>16 are talking about my definition of "economic</p> <p>17 value" in this specific matter based on</p> <p>18 assumptions that I was asked to make. You are</p> <p>19 using "economic value" in a way that is not</p> <p>20 consistent with how I just defined "economic</p> <p>21 value" for the purposes of my report. So in</p> <p>22 that --</p> <p>23 BY MR. GOLDBERG:</p> <p>24 Q Doctor --</p> <p>25 THE WITNESS: Hold on.</p>	<p style="text-align: right;">Page 145</p> <p>1 You can respond.</p> <p>2 THE WITNESS: Thank you.</p> <p>3 MR. HONIK: As best you can.</p> <p>4 THE WITNESS: Thank you.</p> <p>5 So for the -- I mean, as a general</p> <p>6 matter, if people are saving money, then there</p> <p>7 is some economic -- there might be economic</p> <p>8 value. That is not the way in which I am using</p> <p>9 the term "economic value" or "worth" or</p> <p>10 "worthlessness" in my report.</p> <p>11 BY MR. GOLDBERG:</p> <p>12 Q If a patient is -- strike that.</p> <p>13 So if consumers received that economic</p> <p>14 value that you just described from their treatment</p> <p>15 of valsartan, is, in your view, the product still</p> <p>16 worthless?</p> <p>17 MR. HONIK: Object to form, asked and</p> <p>18 answered, beyond the scope.</p> <p>19 THE WITNESS: Okay. So from the</p> <p>20 Food and Drug Administration's perspective,</p> <p>21 there are two values associated with a drug --</p> <p>22 associated with a prescription drug. One is</p> <p>23 related to the economic value. Is this product</p> <p>24 actually available to be sold into the U.S.</p> <p>25 market? Does supply meet demand?</p>

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<p style="text-align: right;">Page 146</p> <p>1 There is a separate value that is</p> <p>2 related to its therapeutic benefit. Only</p> <p>3 products that are considered to be legitimate</p> <p>4 products, they meet the evidentiary standard</p> <p>5 for sale in the U.S., could have therapeutic</p> <p>6 value, because you need to meet the evidentiary</p> <p>7 standard of being actually allowed on the</p> <p>8 market to be sold before you can have -- be</p> <p>9 judged to have additional therapeutic --</p> <p>10 therapeutic value because it only -- the only</p> <p>11 way that you would know whether that product</p> <p>12 has benefit is if -- for a given patient, is if</p> <p>13 the product meets the evidentiary standard.</p> <p>14 So in my analysis, that -- a product</p> <p>15 has value, economic value, if it meets the</p> <p>16 first part, that is there is a legitimate</p> <p>17 supply curve. Therapeutic value, whether that</p> <p>18 product is -- provides value or clinical value</p> <p>19 or maybe does have some economic value to a</p> <p>20 consumer is all predicated on it meeting --</p> <p>21 COURT REPORTER: Is all predicated...</p> <p>22 THE WITNESS: That goes above and</p> <p>23 beyond the economic value that I have been</p> <p>24 asked to consider.</p> <p>25 I'm sorry. Is there a question? I'm</p>	<p style="text-align: right;">Page 148</p> <p>1 potential downside costs are all predicated on</p> <p>2 the product being a legitimate product allowed</p> <p>3 for sale --</p> <p>4 BY MR. GOLDBERG:</p> <p>5 Q Of a product --</p> <p>6 A Hold on, please, let me finish.</p> <p>7 Allowed for sale in the U.S. market.</p> <p>8 I was asked to assume these -- these products were</p> <p>9 not legitimate products. They were not allowed into</p> <p>10 the U.S. market -- or they were not -- did not meet</p> <p>11 the evidentiary standard for sale. And therefore,</p> <p>12 that clinical value that they may have provided, is</p> <p>13 a separate matter.</p> <p>14 Q That clinical value --</p> <p>15 A Hold on. Hold on.</p> <p>16 And not one that I evaluated. It's</p> <p>17 outside the scope of my report.</p> <p>18 Q That clinical value is meaningless to</p> <p>19 you?</p> <p>20 MR. HONIK: Object to the form, asked</p> <p>21 and answered.</p> <p>22 THE WITNESS: Okay. Again, as, like,</p> <p>23 a human being, obviously, pharmaceutical</p> <p>24 products that are available for sale in the</p> <p>25 U.S. have -- may have clinical value to</p>
<p style="text-align: right;">Page 147</p> <p>1 hearing voices.</p> <p>2 MR. HONIK: You're hearing background</p> <p>3 noise.</p> <p>4 THE WITNESS: Okay. Okay.</p> <p>5 BY MR. GOLDBERG:</p> <p>6 Q Have you reviewed -- strike that.</p> <p>7 You haven't reviewed any of the</p> <p>8 deposition testimony of any of the plaintiffs or</p> <p>9 class representatives in this case, correct?</p> <p>10 MR. HONIK: Objection, asked and</p> <p>11 answered.</p> <p>12 THE WITNESS: I think you asked that</p> <p>13 question to me this morning, and the answer --</p> <p>14 my answer remains no.</p> <p>15 BY MR. GOLDBERG:</p> <p>16 Q Okay. So you're not aware of the</p> <p>17 plaintiffs and class representatives who have</p> <p>18 testified that they got therapeutic benefits from</p> <p>19 the at-issue valsartan they took? You're not aware</p> <p>20 of that testimony, right?</p> <p>21 MR. HONIK: Object to the form, asked</p> <p>22 and answered, beyond the scope.</p> <p>23 THE WITNESS: Again, it's of no moment</p> <p>24 for my assignment in this case. Therapeutic</p> <p>25 value associated with a product's benefits and</p>	<p style="text-align: right;">Page 149</p> <p>1 individual patients.</p> <p>2 But for the purposes of my report, I'm</p> <p>3 using the term "economic value" in a very</p> <p>4 specific way, which is that the products meet</p> <p>5 the evidence -- either meet the evidentiary</p> <p>6 standard for being allowed to be sold into the</p> <p>7 U.S., or they don't.</p> <p>8 I was asked to assume that they do</p> <p>9 not. And therefore, all the downstream</p> <p>10 potential benefits and costs associated with</p> <p>11 the products are of no moment -- excuse me --</p> <p>12 are of no moment to me.</p> <p>13 BY MR. GOLDBERG:</p> <p>14 Q Let's look at it just from a human</p> <p>15 way, the human standpoint.</p> <p>16 You agree that from a human</p> <p>17 standpoint, consumers who took valsartan between</p> <p>18 2012 and 2018 may have had a therapeutic benefit</p> <p>19 from the drug, right?</p> <p>20 MR. HONIK: Object to the form.</p> <p>21 BY MR. GOLDBERG:</p> <p>22 Q Human standpoint? Not -- not --</p> <p>23 MR. HONIK: Object to the form.</p> <p>24 THE WITNESS: I'm not a doctor, sir.</p> <p>25 I'm so sorry, Ruben.</p>

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1 MR. HONIK: That's okay. I think  
2 Jamie got it.  
3 THE COURT REPORTER: I have not heard  
4 anything clearly for the last 10 seconds.  
5 MR. HONIK: Okay. Do you want to ask  
6 that question again?  
7 MR. GOLDBERG: We can strike that  
8 question.  
9 THE COURT REPORTER: I have --  
10 MR. HONIK: It's stricken, Jamie.  
11 COURT REPORTER: Can we go off the  
12 record for a second, please?  
13 THE VIDEOGRAPHER: The time is 2:44.  
14 We're going off the record.  
15 (Whereupon, a short break was taken.)  
16 THE VIDEOGRAPHER: The time is 2:55.  
17 We're back on the record.  
18 BY MR. GOLDBERG:  
19 Q Dr. Conti, you'd agree that the  
20 therapeutic benefits that consumers may have gotten  
21 from valsartan between 2012 and 2018 would be  
22 different from one consumer to the next, right?  
23 MR. HONIK: Object to form, outside  
24 the scope.  
25 You can answer.

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1 THE WITNESS: Again, it's -- it's no  
2 moment to my report -- or to my opinions in  
3 this matter.  
4 BY MR. GOLDBERG:  
5 Q I -- I understand. I understand your  
6 view. But you've talked about the drug as being  
7 worthless, and we're talking about the therapeutic  
8 benefit of the drug and -- in the context of your  
9 opinion related to worthlessness.  
10 My question is, you would agree that  
11 consumers would experience the therapeutic benefits  
12 from the at-issue valsartan products differently  
13 from consumer to consumer?  
14 COURT REPORTER: Differently from  
15 consumers...  
16 MR. GOLDBERG: Differently from  
17 consumer to consumer.  
18 MR. HONIK: Object to form, asked and  
19 answered and beyond the scope of her report.  
20 THE WITNESS: Okay. So I think that  
21 we are misunderstanding. I think you are  
22 misunderstanding the way in which I'm using the  
23 term "economic value" or "economic worth."  
24 And so maybe if you would indulge me,  
25 I can just go back to my report. On page -- on

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<p style="text-align: right;">Page 154</p> <p>1 at the point of sale by virtue of the</p> <p>2 dangerousness caused by their contamination,</p> <p>3 regardless whether the sold VCDs actually</p> <p>4 achieve the medical purpose of lowering blood</p> <p>5 pressure." I can go on.</p> <p>6 "Put differently, contaminated drugs,</p> <p>7 even if medically efficacious for their</p> <p>8 purpose, cannot create a benefit of the bargain</p> <p>9 because the contaminants, and their dangerous</p> <p>10 effects, were never bargained for.</p> <p>11 "Further, contaminated drugs do create</p> <p>12 a present injury because their sale should</p> <p>13 never have occurred."</p> <p>14 THE COURT REPORTER: Doctor, just for</p> <p>15 my clarification, what were you reading from?</p> <p>16 THE WITNESS: I was reading from my</p> <p>17 cell phone.</p> <p>18 BY MR. GOLDBERG:</p> <p>19 Q And what were you -- what were you</p> <p>20 reading from?</p> <p>21 A I was reading from an opinion of the</p> <p>22 court.</p> <p>23 Q And who sent you that opinion?</p> <p>24 MR. HONIK: Without waiving -- excuse</p> <p>25 me, without waiving the objection, I'll permit</p>	<p style="text-align: right;">Page 156</p> <p>1 BY MR. GOLDBERG:</p> <p>2 Q And did John -- so we talked about the</p> <p>3 therapeutic benefits that may have -- that -- that</p> <p>4 consumers who took the at-issue valsartan products</p> <p>5 may have experienced. You don't dispute that</p> <p>6 consumers who took valsartan at-issue products may</p> <p>7 have experienced therapeutic benefits?</p> <p>8 MR. HONIK: Object to the form, asked</p> <p>9 and answered, beyond the scope.</p> <p>10 You may answer.</p> <p>11 THE WITNESS: Again, the demand curve</p> <p>12 for these products may exist. From an economic</p> <p>13 theory perspective, the demand curve represents</p> <p>14 individual assessments of benefits and costs of</p> <p>15 prescription drugs. I am not disputing that</p> <p>16 there may have been a demand curve for these</p> <p>17 products. That is not my opinion.</p> <p>18 My opinion is related to the supply</p> <p>19 curve. In other words, that products that do</p> <p>20 not meet the evidentiary standard are not</p> <p>21 allowed into the U.S. products of trade, they</p> <p>22 are not viewed as being legitimate products.</p> <p>23 From my perspective, those products are</p> <p>24 worthless.</p> <p>25</p>
<p style="text-align: right;">Page 155</p> <p>1 her to answer.</p> <p>2 THE WITNESS: So I have been aware of</p> <p>3 this opinion for a while, and the opinion was</p> <p>4 provided to me by counsel.</p> <p>5 BY MR. GOLDBERG:</p> <p>6 Q When was that?</p> <p>7 A When did they -- when did I receive</p> <p>8 this via text on my phone?</p> <p>9 Q Yes.</p> <p>10 A Five minutes ago. But I have been</p> <p>11 aware of this before then.</p> <p>12 Q So counsel texted you five minutes ago</p> <p>13 with the judge's opinion that you just read into the</p> <p>14 record?</p> <p>15 MR. HONIK: Without waiving -- excuse</p> <p>16 me, without waiving the objection and</p> <p>17 privilege, I'll permit her to answer.</p> <p>18 THE WITNESS: Yes. It was just texted</p> <p>19 to me. But again, I have been aware of this</p> <p>20 opinion for a while.</p> <p>21 BY MR. GOLDBERG:</p> <p>22 Q And which counsel texted that to you?</p> <p>23 MR. HONIK: Without waiving the</p> <p>24 objection, I'll permit her to answer.</p> <p>25 THE WITNESS: John Davis.</p>	<p style="text-align: right;">Page 157</p> <p>1 BY MR. GOLDBERG:</p> <p>2 Q Yeah. And the consumers in that</p> <p>3 demand curve, as you have put it, those -- each</p> <p>4 consumer has -- has their own individual demand for</p> <p>5 the drug, right?</p> <p>6 MR. HONIK: Object -- object to the</p> <p>7 form, asked and answered and beyond the scope.</p> <p>8 You may answer.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MR. GOLDBERG:</p> <p>11 Q And --</p> <p>12 A I mean, predicated, of course, on</p> <p>13 their doctor being willing to write a prescription</p> <p>14 and their insurer being willing to -- to insure that</p> <p>15 prescription, which is also predicated on FDA</p> <p>16 approval of the product.</p> <p>17 But -- I mean, consumer demand does</p> <p>18 not live in a vacuum outside of physician</p> <p>19 prescribing behavior in this context.</p> <p>20 Q And that physician prescribing</p> <p>21 behavior and the consumer demand for the at-issue</p> <p>22 valsartan products, that's individual from one</p> <p>23 consumer to the next. Why I need the drug is</p> <p>24 different from why someone else might need the drug,</p> <p>25 and so on, right?</p>



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<p style="text-align: right;">Page 158</p> <p>1 MR. HONIK: Object to the form,</p> <p>2 outside the scope, asked and answered, improper</p> <p>3 hypothetical.</p> <p>4 You may answer.</p> <p>5 THE WITNESS: I don't know what you</p> <p>6 mean by the term "need," sir.</p> <p>7 BY MR. GOLDBERG:</p> <p>8 Q Why I might be prescribed valsartan</p> <p>9 would likely be different than why someone else</p> <p>10 might be prescribed valsartan, and these are really</p> <p>11 individualized issues?</p> <p>12 MR. HONIK: Same objection as</p> <p>13 previously stated.</p> <p>14 THE WITNESS: I mean, that is not</p> <p>15 consistent with my understanding of demand for</p> <p>16 prescription drugs. I'm sorry.</p> <p>17 BY MR. GOLDBERG:</p> <p>18 Q Do you agree that therapeutic benefits</p> <p>19 that consumers who have taken at-issue valsartan may</p> <p>20 have been different from consumer to consumer?</p> <p>21 MR. HONIK: Object to the form, asked</p> <p>22 and answered, beyond the scope.</p> <p>23 THE WITNESS: Again, demand for</p> <p>24 prescription drugs is related, generally, to</p> <p>25 their benefits and their costs, predicated on</p>	<p style="text-align: right;">Page 160</p> <p>1 consumer?</p> <p>2 MR. HONIK: Objection, asked and</p> <p>3 answered, beyond the scope. I think you've</p> <p>4 asked her this four times already.</p> <p>5 THE WITNESS: They may have received</p> <p>6 exactly the same therapeutic benefit.</p> <p>7 BY MR. GOLDBERG:</p> <p>8 Q And they may not, right?</p> <p>9 A You're -- I'm sorry, sir, but this is</p> <p>10 impossible. You just interrupted me again,</p> <p>11 mid-answer, to the same question.</p> <p>12 Q Go ahead.</p> <p>13 A No. Please answer your -- please ask</p> <p>14 your question again, and then I'll answer it.</p> <p>15 Q Yes or no, do you agree that the</p> <p>16 therapeutic benefits that consumers may have</p> <p>17 realized from taking the at-issue valsartan products</p> <p>18 would have differed from consumer to consumer?</p> <p>19 MR. HONIK: Same objection.</p> <p>20 THE WITNESS: Again, this is not a</p> <p>21 yes-or-no-type question. Consumers may have</p> <p>22 received exactly the same benefit from at-issue</p> <p>23 valsartan products, or they may have received</p> <p>24 different experiences of that product. It is</p> <p>25 of no moment in my opinions in this matter</p>
<p style="text-align: right;">Page 159</p> <p>1 the supply of those products being legitimate.</p> <p>2 In other words, the manufacturer actually</p> <p>3 meeting the evidentiary standard.</p> <p>4 BY MR. GOLDBERG:</p> <p>5 Q Yes or no -- yes or no, do you agree</p> <p>6 the therapeutic benefit --</p> <p>7 A Sir --</p> <p>8 Q I thought you were finished with your</p> <p>9 answer.</p> <p>10 MR. HONIK: She's not.</p> <p>11 THE WITNESS: I'm not. I'm not.</p> <p>12 BY MR. GOLDBERG:</p> <p>13 Q Why don't you go ahead and finish your</p> <p>14 answer, and then I'll ask my next question.</p> <p>15 A Why don't ask you your question again</p> <p>16 because you interrupted me in mid-answer.</p> <p>17 Q Oh, okay.</p> <p>18 A Yeah.</p> <p>19 Q Yes or no, do you agree that the</p> <p>20 therapeutic benefits that consumers who have</p> <p>21 taken -- let me -- let me rephrase.</p> <p>22 Yes or no, do you agree -- yes or no,</p> <p>23 do you agree that the consumers who took at-issue</p> <p>24 valsartan would have received -- would have received</p> <p>25 different therapeutic benefits from consumer to</p>	<p style="text-align: right;">Page 161</p> <p>1 because, again, demand -- their demand is</p> <p>2 predicated on a legitimate supply curve. And</p> <p>3 I've been asked to assume that there was no</p> <p>4 legitimate supply curve.</p> <p>5 BY MR. GOLDBERG:</p> <p>6 Q You would agree, Dr. Conti, that we</p> <p>7 all have different risk tolerances for things we're</p> <p>8 willing to put into our bodies?</p> <p>9 MR. HONIK: Same objection as</p> <p>10 previously, beyond the scope.</p> <p>11 THE WITNESS: From the U.S.</p> <p>12 regulator's perspective, risk tolerance is of</p> <p>13 no moment. Again, only products that meet the</p> <p>14 evidentiary standard are allowed to enter into</p> <p>15 the prescription class of trade in the</p> <p>16 United States.</p> <p>17 BY MR. GOLDBERG:</p> <p>18 Q I'm asking you a different question.</p> <p>19 Answer my question.</p> <p>20 You'd agree that people have different</p> <p>21 risk tolerances from what they're willing to put</p> <p>22 into their bodies from person to person?</p> <p>23 MR. HONIK: Same objection as</p> <p>24 previously.</p> <p>25 THE WITNESS: Okay. I'm going to</p>

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<p style="text-align: right;">Page 162</p> <p>1 answer your question again, which is, it is of</p> <p>2 no moment whether people want to consume</p> <p>3 illegitimate products. If there is no</p> <p>4 legitimate supply curve, those products cannot</p> <p>5 enter into the U.S. class of trade. That</p> <p>6 is -- that is the position of the U.S.</p> <p>7 government. And it's --</p> <p>8 BY MR. GOLDBERG:</p> <p>9 Q Is my answer, no, you --</p> <p>10 A Hold on. Hold on.</p> <p>11 Q You're still going?</p> <p>12 A I am still going.</p> <p>13 Q Okay. I mean, I would just say,</p> <p>14 Dr. Conti, I don't mean to be rude. But what</p> <p>15 happens is you -- you kind of -- the way you do this</p> <p>16 is you sort of get to the end of something. It</p> <p>17 seems like you're stopping, and then that's why I'm</p> <p>18 starting. I'm not trying to interrupt you. And</p> <p>19 then you --</p> <p>20 A Mr. Goldberg, that is not the case.</p> <p>21 You just continue to talk over me. The mansplaining</p> <p>22 is a little bit challenging, frankly. But I'll try</p> <p>23 to do this again.</p> <p>24 Q Okay.</p> <p>25 A Again, Americans have a variation of</p>	<p style="text-align: right;">Page 164</p> <p>1 BY MR. GOLDBERG:</p> <p>2 Q Your methodology does not take into</p> <p>3 consideration how consumers might have perceived the</p> <p>4 value of the at-issue valsartan to them, correct?</p> <p>5 MR. HONIK: Object to the form.</p> <p>6 THE WITNESS: My analysis presumes</p> <p>7 there is a demand curve for these products.</p> <p>8 What my analysis also presumes is that there is</p> <p>9 no legitimate supply curve for products that do</p> <p>10 not meet the evidentiary standard of the U.S.</p> <p>11 BY MR. GOLDBERG:</p> <p>12 Q What your analysis does not take into</p> <p>13 consideration is whether any consumer perceived that</p> <p>14 they received a therapeutic benefit that provided a</p> <p>15 value to them, right?</p> <p>16 MR. HONIK: Object to the form, asked</p> <p>17 and answered.</p> <p>18 You may answer.</p> <p>19 THE WITNESS: Again, of course, it</p> <p>20 does. There is a demand curve for these</p> <p>21 products. That is not -- that is not the issue</p> <p>22 in this case. Of course, there's a demand</p> <p>23 curve, and I -- I describe it in my report.</p> <p>24 What my report is trying to explain is that</p> <p>25 there is no legitimate supply curve for</p>
<p style="text-align: right;">Page 163</p> <p>1 their risk tolerance. That is of no moment for the</p> <p>2 legitimate class of trade for prescription drugs.</p> <p>3 If the product -- if pharmaceutical companies want</p> <p>4 to sell their products in the U.S., they must meet</p> <p>5 the evidentiary standard. Full stop.</p> <p>6 Q You would agree that some consumers</p> <p>7 would be willing to accept a very low risk of a</p> <p>8 probable human carcinogen, whereas other consumers</p> <p>9 might not be willing to accept the risk of a</p> <p>10 probable human carcinogen?</p> <p>11 MR. HONIK: Object to form, outside</p> <p>12 the scope.</p> <p>13 THE WITNESS: It is of no moment in my</p> <p>14 opinions in this matter. The bottom line is</p> <p>15 that these manufacturers attested to that there</p> <p>16 was no contamination of these products by known</p> <p>17 human carcinogens.</p> <p>18 BY MR. GOLDBERG:</p> <p>19 Q Is the answer to my question, no, you</p> <p>20 don't agree?</p> <p>21 MR. HONIK: Object to the form, asked</p> <p>22 and answered.</p> <p>23 THE WITNESS: I have answered your</p> <p>24 question, sir, the best way that I know how.</p> <p>25</p>	<p style="text-align: right;">Page 165</p> <p>1 products that do not meet the evidentiary</p> <p>2 standard of the U.S. government.</p> <p>3 I was asked to assume that</p> <p>4 products -- that these products at issue</p> <p>5 between 2012 and 2018 did not meet the</p> <p>6 evidentiary standard. They were adulterated</p> <p>7 and misbranded. Therefore, there was no supply</p> <p>8 curve, in my analysis.</p> <p>9 BY MR. GOLDBERG:</p> <p>10 Q Are you familiar with what the FDA</p> <p>11 advised patients to do when the recalls were</p> <p>12 announced?</p> <p>13 MR. HONIK: Object to the form,</p> <p>14 outside the scope.</p> <p>15 THE WITNESS: Specifically, what do</p> <p>16 you mean?</p> <p>17 BY MR. GOLDBERG:</p> <p>18 Q Are you aware that the FDA advised</p> <p>19 people that they should not discontinue their use of</p> <p>20 valsartan until they spoke with their doctor about</p> <p>21 it?</p> <p>22 MR. HONIK: Object to the form, asked</p> <p>23 and answered, outside the scope.</p> <p>24 THE WITNESS: Again, my understanding</p> <p>25 is that there were multiple FDA communications</p>

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<p style="text-align: right;">Page 166</p> <p>1 when the contamination of these products and</p> <p>2 their adulteration became known. Is there a</p> <p>3 specific communication that you are referring</p> <p>4 to?</p> <p>5 BY MR. GOLDBERG:</p> <p>6 Q Well, I think my first question</p> <p>7 is -- and you can answer no if it's no.</p> <p>8 Are you aware of the FDA telling</p> <p>9 patients they should not discontinue the use of</p> <p>10 their valsartan when the FDA announced the recalls?</p> <p>11 MR. HONIK: Same objection as</p> <p>12 previously stated.</p> <p>13 THE WITNESS: Okay. The FDA had</p> <p>14 multiple communications with consumers and</p> <p>15 other suppliers about these products. I'm</p> <p>16 asking you to be specific.</p> <p>17 BY MR. GOLDBERG:</p> <p>18 Q Do you want to turn to Tab 2 in your</p> <p>19 binder?</p> <p>20 A Which binder?</p> <p>21 Q Tab 2 is binder -- that would be</p> <p>22 binder, I guess, Volume 1 of 3?</p> <p>23 THE COURT REPORTER: Will this be a</p> <p>24 new exhibit?</p> <p>25 MR. GOLDBERG: Yeah -- we'll mark this</p>	<p style="text-align: right;">Page 168</p> <p>1 Q It's probably --</p> <p>2 MR. GOLDBERG: For the tech -- it's</p> <p>3 almost three pages to the end. It's the last</p> <p>4 three pages-- three pages from the end.</p> <p>5 THE WITNESS: Do you mean the one that</p> <p>6 says July 13th, 2018?</p> <p>7 BY MR. GOLDBERG:</p> <p>8 Q No, it's -- it's a page before it.</p> <p>9 It's the page before that.</p> <p>10 A So that's three pages in. So four</p> <p>11 pages in, on July 18th, 2018, not the other --</p> <p>12 Q Right.</p> <p>13 A Okay.</p> <p>14 Q Okay. And at the top of this page, it</p> <p>15 says -- where it says, "7-18-2018," do you see that?</p> <p>16 A Yes.</p> <p>17 Q And this page is referring to the</p> <p>18 recall of valsartan by ZHP. Do you see that?</p> <p>19 A I don't see ZHP here.</p> <p>20 Q Yeah. It's right in the second</p> <p>21 paragraph.</p> <p>22 A You mean Zhejiang Huahai</p> <p>23 Pharmaceuticals?</p> <p>24 Q Correct. Correct.</p> <p>25 A Okay. So, yes, I see that here.</p>
<p style="text-align: right;">Page 167</p> <p>1 as Conti 6. This is a --</p> <p>2 (Whereupon, Exhibit Conti 6 was marked</p> <p>3 for Identification.)</p> <p>4 BY MR. GOLDBERG:</p> <p>5 Q Dr. Conti, I'm marking as exhibit</p> <p>6 Conti 6, a document entitled, "FDA Updates and Press</p> <p>7 Announcements on Angiotensin II Receptor Blocker</p> <p>8 Recalls." Do you see that?</p> <p>9 MR. HONIK: Seth, what's Conti 5?</p> <p>10 MR. GOLDBERG: Her expert report.</p> <p>11 MR. HONIK: Thank you.</p> <p>12 BY MR. GOLDBERG:</p> <p>13 Q Are you familiar with this document,</p> <p>14 Dr. Conti?</p> <p>15 A I am aware of this document.</p> <p>16 Q This is a document that was cited in</p> <p>17 your report, right?</p> <p>18 A There are many documents from the FDA</p> <p>19 documented -- sorry, cited in my report.</p> <p>20 Q And this is one of those documents,</p> <p>21 right?</p> <p>22 A I don't -- I don't recall.</p> <p>23 Q If you turn to the very end of this</p> <p>24 document, it's the July 18th, 2018 statement.</p> <p>25 A I don't see that, sir. I'm sorry.</p>	<p style="text-align: right;">Page 169</p> <p>1 Q Okay. And at the bottom of that page,</p> <p>2 there are two bullet points at the very bottom. Do</p> <p>3 you see those? And --</p> <p>4 A Is that a question?</p> <p>5 Q The first bullet point --</p> <p>6 A Is that a question?</p> <p>7 Q The first bullet point -- the first</p> <p>8 bullet point, the FDA is instructing patients taking</p> <p>9 at-issue valsartan that they should continue taking</p> <p>10 their current medicine until their doctor or</p> <p>11 pharmacist provides a replacement or a different</p> <p>12 treatment option. Did I read that correctly?</p> <p>13 A I think you asked me two questions,</p> <p>14 but I see that you have read that -- that text</p> <p>15 correctly.</p> <p>16 Q Did you consider at all in your</p> <p>17 assessment the FDA's instructing patients to</p> <p>18 continue -- to continue taking their medicine until</p> <p>19 they found an alternative?</p> <p>20 MR. HONIK: Object to form, asked and</p> <p>21 answered, beyond the scope.</p> <p>22 THE WITNESS: Again, from my</p> <p>23 perspective, there is a demand for these</p> <p>24 products. In my report, I was asked to assume</p> <p>25 that these products were contaminated,</p>

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1 adulterated and misbranded. And therefore,  
2 there is no --  
3 THE COURT REPORTER: I'm sorry. There  
4 is no...  
5 THE WITNESS: There is no legitimate  
6 supply curve. The fact that the FDA reaffirms  
7 that there is a demand curve for these products  
8 and many other products that might treat  
9 someone's hypertension, is in my report. It  
10 is, by definition, considered.  
11 My report is about the supply of these  
12 products.  
13 BY MR. GOLDBERG:  
14 Q The FDA is acknowledging that the  
15 at-issue valsartan may be providing a therapeutic  
16 benefit to the consumers who are taking it, right?  
17 MR. HONIK: Object to the form, asked  
18 and answered, beyond the scope.  
19 THE WITNESS: That's not what it says  
20 here on this -- on this document, sir.  
21 MR. GOLDBERG: You can take down that  
22 document.  
23 BY MR. GOLDBERG:  
24 Q You're aware that there have been a  
25 number of recalls of valsartan since that one in

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1 July of 2018 that -- that went through July -- went  
2 through 2019, right?

3 A I am aware, as I stated earlier, that  
4 the FDA has had many communications with the  
5 manufacturers about these products and also the  
6 American public about these products over -- over  
7 time.

8 Q And in each of those recalls, the FDA  
9 made the same directive to consumers, that they  
10 should not discontinue their use of valsartan until  
11 they spoke with their doctor about an alternative?

12 MR. HONIK: Object to form.

13 BY MR. GOLDBERG:

14 Q Is it your testimony that the FDA saw  
15 no therapeutic benefit in the at-issue valsartan?

16 MR. HONIK: Object to form, asked and  
17 answered, beyond the scope.

18 THE WITNESS: So there were valsartan  
19 products that were not contaminated or  
20 adulterated or misbranded that were available  
21 during this time period, most notably by the  
22 manufacturer --

23 THE COURT REPORTER: I'm sorry. By  
24 the manufacturer...

25 THE WITNESS: By the manufacturer

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<p style="text-align: right;">Page 174</p> <p>1 So like I said, to begin, when we                  2 started this long line of questioning, there were                  3 many, many communications the FDA had with American                  4 consumers and physicians and pharmacists about                  5 valsartan.                  6 And so there are many products that                  7 are available to treat high blood pressure and                  8 hypertension in the U.S. market. We're very                  9 fortunate. And the FDA was telling consumers that                  10 they should talk to their doctor and talk to their                  11 pharmacist about their treatment in the use of both                  12 valsartan products, but also many other products                  13 that could control their condition as well.                  14 Q The directive about the valsartan                  15 recall, by the FDA on July 18, 2018, to consumers                  16 about the valsartan recall, where the FDA says,                  17 "Continue taking your current medicine until your                  18 doctor or pharmacist gives you a replacement or a                  19 different treatment option," the FDA is saying if                  20 you are taking the at-issue valsartan products, you                  21 should continue taking those until you talk to your                  22 doctor, right?                  23 MR. HONIK: Objection to form, asked                  24 and answered, beyond the scope.                  25 You may answer.</p>	<p style="text-align: right;">Page 176</p> <p>1 that until you speak with your doctor. Okay?                  2 MR. HONIK: Object to form, beyond the                  3 scope, asked and answered.                  4 You may answer.                  5 THE WITNESS: Thank you.                  6 So, again, there are many valsartan                  7 products, and there are valsartan products that                  8 don't contain contamination or adulteration.                  9 In fact, FDA says that in this specific wording                  10 on July 18, 2018.                  11 What it's communicating is, to                  12 American consumers and their physicians and                  13 pharmacists, is that, for those of you taking                  14 valsartan products, go talk to your doctor                  15 about continuing taking those products or                  16 switching.                  17 BY MR. GOLDBERG:                  18 Q Yeah. Okay. And so if those products                  19 are some of the products that are at-issue now, you                  20 don't deny that the FDA was saying keep taking them?                  21 MR. HONIK: Object to the form, asked                  22 and answered.                  23 THE WITNESS: You mean the                  24 non-recalled products?                  25</p>
<p style="text-align: right;">Page 175</p> <p>1 THE WITNESS: Thank you.                  2 So, again, just going back to your                  3 specifically directed text, the FDA states,                  4 "Valsartan is used to treat high blood pressure                  5 and heart failure. Not all products containing                  6 valsartan" -- "valsartan are recalled, and this                  7 update will clarify which valsartan-containing                  8 products are being recalled."                  9 It then goes on to say there are three                  10 current voluntary recalls, which involve Teva                  11 products, Princeton products and some other.                  12 And then they go on to say you should continue                  13 taking your current medication until you talk                  14 to your doctor about the treatment of your                  15 condition, where your doctor can give you a                  16 replacement or a different treatment option.                  17 And then they go on to say, as you                  18 highlighted, "Not all valsartan-containing                  19 medications are affected and being recalled."                  20 BY MR. GOLDBERG:                  21 Q And the current medicine that they're                  22 referring to when they're saying "current medicine,"                  23 could have been the at-issue valsartan products that                  24 somebody had in a bottle of pills at their house,                  25 right? And that the FDA is saying continue taking</p>	<p style="text-align: right;">Page 177</p> <p>1 BY MR. GOLDBERG:                  2 Q No. I mean products that were                  3 recalled. But remember, somebody -- okay. On                  4 July 2018 -- on July 2018, if somebody had a bottle                  5 of valsartan that is part of the at-issue valsartan                  6 products that you're talking about, right? They're                  7 sitting at home. They've got their bottle of                  8 valsartan. It has NDMA in it. Okay? Just assume.                  9 Okay? Accept my assumption. It's hypothetical.                  10 Okay?                  11 Somebody on July 2018, on                  12 July 28, 2018, has a bottle of valsartan, that is                  13 one of the at-issue products because it has NDMA in                  14 it, you would agree that the FDA is instructing that                  15 patient to continue to take that drug until they                  16 talk to their doctor, right?                  17 MR. HONIK: Object to form, object to                  18 the hypothetical based upon facts not of                  19 evidence, asked and answered.                  20 THE WITNESS: So, again, there are                  21 many communications the FDA had with American                  22 consumers, physicians and pharmacists about                  23 these products. In -- in this specific                  24 communication, the FDA reminds consumers,                  25 pharmacists and physicians, that there are</p>



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<p style="text-align: right;">Page 178</p> <p>1 valsartan products that are being recalled, and</p> <p>2 there are valsartan products that are not part</p> <p>3 of the recall. And it recommends to consumers</p> <p>4 that they -- they continue taking their</p> <p>5 product -- these products, and go talk to their</p> <p>6 doctor about it.</p> <p>7 BY MR. GOLDBERG:</p> <p>8 Q And that includes both valsartan that</p> <p>9 is being recalled and valsartan that may not be</p> <p>10 recalled, right?</p> <p>11 MR. HONIK: Object to the form, asked</p> <p>12 and answered.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. GOLDBERG:</p> <p>15 Q Awesome.</p> <p>16 And did you consider this FDA</p> <p>17 statement in forming your opinion?</p> <p>18 A Again, I -- in my report, I assume</p> <p>19 that there is a demand curve for -- for these</p> <p>20 prescription drugs, including the at-issue products.</p> <p>21 Q Yes or no, did you consider this</p> <p>22 specific statement in forming your opinion?</p> <p>23 MR. HONIK: Objection, asked and</p> <p>24 answered.</p> <p>25 THE WITNESS: Sir, I'm sorry. A</p>	<p style="text-align: right;">Page 180</p> <p>1 All this statement is saying is</p> <p>2 legitimating my presumption, which is there is</p> <p>3 a demand curve. And the FDA goes on, in later</p> <p>4 statements, to American consumers, saying there</p> <p>5 is a demand curve. All that's supporting my</p> <p>6 position.</p> <p>7 MR. GOLDBERG: Why don't we take a</p> <p>8 two-minute break, if we can. Okay?</p> <p>9 THE VIDEOGRAPHER: The time is 3:37.</p> <p>10 This ends Media Unit 3. We're going off the</p> <p>11 record.</p> <p>12 (Whereupon, a short break was taken.)</p> <p>13 THE VIDEOGRAPHER: The time is 4:02.</p> <p>14 This begins Media Unit Number 4. We're back on</p> <p>15 the record.</p> <p>16 BY MR. GOLDBERG:</p> <p>17 Q Dr. Conti, have you received any other</p> <p>18 text messages from plaintiffs' counsel today during</p> <p>19 the deposition?</p> <p>20 MR. HONIK: Without waiver of the</p> <p>21 privilege it attaches to work product, I'll</p> <p>22 permit her to answer.</p> <p>23 THE WITNESS: No.</p> <p>24 BY MR. GOLDBERG:</p> <p>25 Q And have any other documents been sent</p>
<p style="text-align: right;">Page 179</p> <p>1 demand curve, by definition, includes that</p> <p>2 consumers may -- pharmacists and physicians may</p> <p>3 want to continue using these at-issue products.</p> <p>4 The issue --</p> <p>5 BY MR. GOLDBERG:</p> <p>6 Q Is the answer to my question, yes?</p> <p>7 MR. HONIK: You're interrupting her.</p> <p>8 You're interrupting the witness.</p> <p>9 BY MR. GOLDBERG:</p> <p>10 Q Is the answer to my question yes?</p> <p>11 MR. HONIK: Objection, asked and</p> <p>12 answered. She's answered that question a dozen</p> <p>13 times already.</p> <p>14 BY MR. GOLDBERG:</p> <p>15 Q Did you consider this statement by the</p> <p>16 FDA in forming your opinion?</p> <p>17 MR. HONIK: Objection, asked and</p> <p>18 answered.</p> <p>19 THE WITNESS: Thank you.</p> <p>20 Again, my opinion is that there was a</p> <p>21 demand curve for valsartan products that</p> <p>22 included the ones that were -- that are</p> <p>23 at-issue, that are contaminated or adulterated</p> <p>24 and misbranded, and others as well that were</p> <p>25 not.</p>	<p style="text-align: right;">Page 181</p> <p>1 to you by email during the day from plaintiffs'</p> <p>2 counsel?</p> <p>3 MR. HONIK: Same objection.</p> <p>4 You may answer.</p> <p>5 THE WITNESS: I'm a little afraid of</p> <p>6 my email, but I haven't checked. So I don't</p> <p>7 know.</p> <p>8 BY MR. GOLDBERG:</p> <p>9 Q Okay. You've -- you've talked about</p> <p>10 legitimate supply curve, and is -- is it your</p> <p>11 testimony that no -- that there is no price that</p> <p>12 could be paid where there's no legitimate supply?</p> <p>13 MR. HONIK: Object to the form.</p> <p>14 THE WITNESS: I don't understand your</p> <p>15 question, sir. I'm sorry.</p> <p>16 BY MR. GOLDBERG:</p> <p>17 Q Well, if -- thinking about your</p> <p>18 Figure 2 where there's no supply curve --</p> <p>19 A Wait a minute. Wait a minute. Hold</p> <p>20 on. Just let me get my report, so I can reference</p> <p>21 what you're referring to.</p> <p>22 Q So Figure 2 of your -- in your report</p> <p>23 shows "Demand with no Legitimized Supply."</p> <p>24 That's -- that's how you've titled this figure,</p> <p>25 right?</p>

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<p style="text-align: right;">Page 182</p> <p>1 A That's accurate.</p> <p>2 Q Is there -- is it -- is it your</p> <p>3 testimony that there's -- that no price could be</p> <p>4 paid under a scenario where there's, to use your</p> <p>5 term, "no legitimate" -- "no legitimate supply"?</p> <p>6 A To be honest, it's a matter of</p> <p>7 economic theory. In order for there to be a price,</p> <p>8 there needs to be both demand and supply. What</p> <p>9 we've been talking about for the past, at least,</p> <p>10 hour, seems like more, is that in my model there is</p> <p>11 demand for these products, although demand falls off</p> <p>12 quite dramatically for these products when the</p> <p>13 recalls start.</p> <p>14 But I have been asked to assume that</p> <p>15 the products at issue were adulterated and</p> <p>16 misbranded. Adulterated and misbranded products are</p> <p>17 not allowed in the U.S. supply chain, and therefore,</p> <p>18 there is no supply. And therefore, there is no</p> <p>19 meeting of demand and supply to arrive at a price.</p> <p>20 Q So there is -- is it your testimony</p> <p>21 that there is no price that would -- could be paid</p> <p>22 for a product where there is no legitimate supply?</p> <p>23 MR. HONIK: Object to the form, asked</p> <p>24 and answered.</p> <p>25 THE WITNESS: As a matter of economic</p>	<p style="text-align: right;">Page 184</p> <p>1 A I meant economic value. And I</p> <p>2 corrected myself and said that there's a -- there's</p> <p>3 an economic value, and then there's a therapeutic</p> <p>4 value.</p> <p>5 Q What -- is there something in</p> <p>6 particular that you're thinking about where the FDA</p> <p>7 has said there is an economic value to a drug?</p> <p>8 MR. HONIK: Objection to the form.</p> <p>9 THE WITNESS: Sure. I put it in my --</p> <p>10 in my report. Let me get to the right</p> <p>11 paragraph, and I'll direct you to it.</p> <p>12 Paragraph 26 of my report, "The FDA</p> <p>13 explains the rationale for its central focus on</p> <p>14 protecting consumers from adulterated and</p> <p>15 misbranded drugs on the web page as follows:</p> <p>16 At the turn of the 20th century, there were no</p> <p>17 federal regulations to protect the public from</p> <p>18 dangerous drugs. 'It was a menacing' --</p> <p>19 "'menacing marketplace filled with products,</p> <p>20 such as William Radam's Microbe Killer and</p> <p>21 Benjamin Bye's'" --</p> <p>22 COURT REPORTER: I'm sorry, Doctor. I</p> <p>23 just -- I lost you there a little bit.</p> <p>24 Marketplace filled with products such</p> <p>25 as William...</p>
<p style="text-align: right;">Page 183</p> <p>1 theory, price cannot be arrived at without</p> <p>2 there being both demand and supply. I have</p> <p>3 been asked to assume there is -- these products</p> <p>4 were adulterated and misbranded, and therefore,</p> <p>5 there is no supply that is legitimate for these</p> <p>6 products as -- as a matter of U.S. policy. And</p> <p>7 therefore, there can be no price.</p> <p>8 BY MR. GOLDBERG:</p> <p>9 Q Is -- is -- in your opinion, is price</p> <p>10 the same as value?</p> <p>11 A So according to the FDA alone, there</p> <p>12 is both an economic price and a therapeutic -- well,</p> <p>13 an economic value and a therapeutic value. We've</p> <p>14 also talked about this quite a lot today.</p> <p>15 There might be therapeutic value, in</p> <p>16 other words, that is encapsulated in the demand</p> <p>17 curve. People -- people trade off the benefits and</p> <p>18 costs of products. But there is no supply of</p> <p>19 illegitimate, adulterated and misbranded products in</p> <p>20 my -- in my model. And therefore, there is no</p> <p>21 price.</p> <p>22 BY MR. GOLDBERG:</p> <p>23 Q You said, "According to the FDA alone,</p> <p>24 there is both an economic price and a therapeutic</p> <p>25 value."</p>	<p style="text-align: right;">Page 185</p> <p>1 THE WITNESS: Sure. I'm sorry.</p> <p>2 "'It was a menacing market'" -- so,</p> <p>3 "'It was a menacing marketplace filled with</p> <p>4 products such as William Radam's Microbe Killer</p> <p>5 and Benjamin Bye's Soothing Balmy Oils to cure</p> <p>6 cancer,' said John Swann, Ph.D., a historian at</p> <p>7 the Food and Drug Administration. Products</p> <p>8 like these were, at minimum, remedies that</p> <p>9 picked the pocket of the user." That's what I</p> <p>10 mean by "economic value."</p> <p>11 "But they could also be downright</p> <p>12 harmful." That's what I mean by</p> <p>13 "therapeutically harmful."</p> <p>14 "I emphasize the text" -- "the text in</p> <p>15 italics because the FDA's statement underscores</p> <p>16 the harms from adulterated and misbranded</p> <p>17 products as twofold: First, economic losses</p> <p>18 from purchasing products that are adulterated</p> <p>19 and misbranded and second, the possibility of</p> <p>20 clinical harm from consumption of adulterated</p> <p>21 and misbranded products."</p> <p>22 From my perspective, there are two</p> <p>23 types of value, and therefore, two types of</p> <p>24 usefulness or worthlessness. There is the</p> <p>25 economic value, and then there is a therapeutic</p>

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<p style="text-align: right;">Page 186</p> <p>1 value. The economic value, products such as                  2 these -- and products that are adulterated and                  3 misbranded should never have entered into the                  4 U.S. class of trades. That is the position of                  5 the U.S. government, that we do not allow                  6 products such as these onto the U.S. market.                  7 BY MR. GOLDBERG:                  8 Q I -- I thought you said that it was                  9 the FDA's view that -- that there was no -- that                  10 this term "economic value," you had said, "the FDA                  11 alone." And then in your last answer, you referred                  12 to you having two views of value, economic value and                  13 therapeutic value.                  14 Are you basing -- are you basing your                  15 view of economic value on what the FDA says?                  16 MR. HONIK: Object to the form. You                  17 may answer.                  18 THE WITNESS: My view is both a matter                  19 of economic theory; there is demand that does                  20 not meet supply, and therefore there is no                  21 price. But also, it is predicated, as my                  22 understanding of FDA regulation, and also,                  23 frankly, regulation that the pharmaceutical                  24 industry itself has -- has wanted, which is                  25 that there is only the legitimate supply of</p>	<p style="text-align: right;">Page 188</p> <p>1 Q Just in terms of the FDA --                  2 A And -- wait, and -- just so that                  3 you're not mischaracterizing me.                  4 It's also the pharmaceutical                  5 industry's view that they want to be known as                  6 producing and entering products into the U.S. and                  7 selling products into the U.S. that are legitimate,                  8 that do meet the evidentiary standard as                  9 distinguished from products that do not.                  10 Q Just as you don't want me to interrupt                  11 you, I'd appreciate it if you don't interrupt me.                  12 A I was just trying to clarify your                  13 mischaracterization of my position.                  14 Q In your answer, going back, you refer                  15 to the economic theory of supply and demand. What                  16 economic treatises have you been relying on for the                  17 theory that where there's no legitimate supply,                  18 there -- there's no possibility for a delivery of                  19 price?                  20 A That's Economics 101.                  21 MR. HONIK: Objection, asked and                  22 answered.                  23 THE WITNESS: It's Economics 101.                  24 MR. HONIK: I think you got your                  25 answer, Seth.</p>
<p style="text-align: right;">Page 187</p> <p>1 products that are not adulterated and                  2 misbranded into the U.S. market, those that are                  3 valuable.                  4 BY MR. GOLDBERG:                  5 Q Let's talk about the first part --                  6 A Wait. Wait. Wait. Wait. Wait.                  7 Hold on. Let me just -- let me just finish.                  8 So it is the -- it is the position of                  9 the pharmaceutical industry in the United States                  10 since at least the '60s, that they have wanted there                  11 to be very clear guidance about what is a legitimate                  12 product, that meets the evidentiary standards, and                  13 what is a not legitimate product that does not.                  14 It is their position that they do not                  15 want products on the market that are misbranded,                  16 adulterated or otherwise contaminated.                  17 Q Are you finished?                  18 A I am. Thank you for asking.                  19 Q So the first part of that question,                  20 you said -- or answer, you said, "My view is more                  21 the matter of economic theory. There is demand that                  22 does not meet supply, and therefore, there is no                  23 price." And then you went on to talk about the                  24 FDA's view?                  25 A Yes.</p>	<p style="text-align: right;">Page 189</p> <p>1 THE WITNESS: Thank you.                  2 It is Economics 101. Literally, my                  3 high school student was just taught that price                  4 is a function of supply and demand. So that                  5 is -- that is a familiar concept to anyone who                  6 has taken elementary economics.                  7 BY MR. GOLDBERG:                  8 Q What economic theory are you relying                  9 on for the point that where there is a cGMP                  10 violation in a drug, there is no legitimate supply?                  11 Which economic theory are you relying on?                  12 MR. HONIK: Objection,                  13 mischaracterizes her previous response.                  14 THE WITNESS: Okay. Again,                  15 Economics 101. There can be a demand curve for                  16 products that have no supply, legitimate                  17 supply. If there is no legitimate supply,                  18 there is no economic price. That -- that is                  19 just -- that is just elementary economics.                  20 BY MR. GOLDBERG:                  21 Q I'm asking you, what is the economic                  22 theory for an adulterated drug equals no legitimate                  23 supply? What's the economic theory for that?                  24 A Sure.                  25 So this is the most highly -- one of</p>

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<p style="text-align: right;">Page 190</p> <p>1 the most highly regulated consumer products in                  2 the -- in the U.S. marketplace. And it is the U.S.                  3 regulator's perspective that products that do not                  4 meet the evidentiary standard of cGMP are not                  5 considered prescription drugs.                  6 And I can point you to the orange book                  7 where the FDA makes that statement. In other words,                  8 in order for a prescription drug to be sold in the                  9 U.S., to enter into the commercial class of trade                  10 and be sold in a pharmacy, it must be produced in                  11 accordance with the cGMP at minimum and attested to                  12 by the manufacturer, and in addition, meet other                  13 evidentiary standards for safety and efficacy.                  14 That is the position of the U.S.                  15 government.                  16 Q Would you agree that patients who                  17 would not have taken the at-issue valsartan would                  18 have -- because it was not supplied, in your view of                  19 the world, would not -- would have needed to take                  20 another medication to treat their hypertension?                  21 MR. HONIK: Objection, beyond the                  22 scope.                  23 THE WITNESS: So are you saying                  24 that -- because I think I'm -- I think what                  25 you're asking is, would there be demand for</p>	<p style="text-align: right;">Page 192</p> <p>1 hyper -- high blood pressure or hypertension or                  2 prevent sequella.                  3 THE COURT REPORTER: Thank you.                  4 BY MR. GOLDBERG:                  5 Q Would there have been a cost                  6 associated with having to take one of those                  7 alternative medications or treatments?                  8 MR. HONIK: Object to the form, beyond                  9 the scope.                  10 THE WITNESS: It depends.                  11 BY MR. GOLDBERG:                  12 Q If someone had to take a different                  13 ARB, they might have had to pay for that ARB, right?                  14 MR. HONIK: Object to the form.                  15 THE WITNESS: They may have. They may                  16 have decided to manage their -- their treatment                  17 in many other ways. Physicians can choose to                  18 do many things. We know that demand for                  19 valsartan products that were recalled dropped                  20 precipitously, and so those consumers went                  21 elsewhere. Where they went, there are many,                  22 many options available to them and their                  23 physicians.                  24 BY MR. GOLDBERG:                  25 Q Is it -- your analysis doesn't take</p>
<p style="text-align: right;">Page 191</p> <p>1 treatment of hypertension and high blood                  2 pressure regardless of whether these products                  3 were on the market? Is that what you're                  4 asking?                  5 BY MR. GOLDBERG:                  6 Q Sure.                  7 A Okay. Consumers in America who suffer                  8 from high blood pressure or hypertension or other                  9 related conditions certainly seek treatment. They                  10 demand treatment for those conditions.                  11 My understanding, and as I understand                  12 it, your own experts have suggested that there were                  13 many treatments available for those conditions,                  14 including uncontaminated, unadulterated valsartan                  15 manufactured by Novartis, among others. And                  16 other -- many other products and non-pharmaceutical                  17 products --                  18 THE COURT REPORTER: I'm sorry,                  19 Doctor, can you repeat the end of that?                  20 THE WITNESS: Sure.                  21 Where -- so my understanding is that                  22 there are many products that are                  23 pharmaceutical, in addition to other                  24 non-pharmaceutical products, that can treat the                  25 underlying conditions to either mitigate the</p>	<p style="text-align: right;">Page 193</p> <p>1 into account the cost that a consumer might have had                  2 to pay for a different medication?                  3 MR. HONIK: Object to the form.                  4 THE WITNESS: Or do you mean or other                  5 management techniques? Because there are many                  6 management techniques.                  7 BY MR. GOLDBERG:                  8 Q Sure.                  9 A Some which would have cost less.                  10 Q Your -- your analysis doesn't take                  11 into account any other -- any -- the cost of any                  12 alternative treatment of medication, right?                  13 MR. HONIK: Object to the form.                  14 THE WITNESS: That is outside the                  15 scope of my report, sir.                  16 BY MR. GOLDBERG:                  17 Q Is it possible that if it                  18 weren't -- if they hadn't taken the at-issue                  19 valsartan products, consumers might have paid more                  20 for a hypertension medication?                  21 MR. HONIK: Object to the form.                  22 THE WITNESS: I've learned in this                  23 world anything is possible. I mean, there are                  24 many, many ways of controlling high blood                  25 pressure and -- and other related conditions</p>

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<p style="text-align: right;">Page 194</p> <p>1 that people may have taken valsartan for during</p> <p>2 this time period. I have no opinion whether or</p> <p>3 not those other therapeutic alternatives,</p> <p>4 including doing nothing, were lostless or</p> <p>5 costly.</p> <p>6 BY MR. GOLDBERG:</p> <p>7 Q Why is the cost of an alternative</p> <p>8 medication not pertinent to your analysis?</p> <p>9 MR. HONIK: Object to the form, asked</p> <p>10 and answered.</p> <p>11 THE WITNESS: Because my damages</p> <p>12 calculation is focused on the injury that</p> <p>13 occurred to consumers and to end-party payors</p> <p>14 for contaminated, adulterated and misbranded</p> <p>15 valsartan products that were recalled during</p> <p>16 the time period. Whether or not people went</p> <p>17 elsewhere, the downstream economic costs to</p> <p>18 that -- to that contamination are of no moment</p> <p>19 in my economic calculation.</p> <p>20 And maybe the way that I like to think</p> <p>21 of it is this way, which is I was asked to</p> <p>22 calculate damages associated with this injury,</p> <p>23 the defendants selling adulterated, misbranded</p> <p>24 products into the U.S. marketplace that</p> <p>25 consumers --</p>	<p style="text-align: right;">Page 196</p> <p>1 BY MR. GOLDBERG:</p> <p>2 Q Okay. You said the drug shouldn't be</p> <p>3 sold, and that it was an illegitimate supply, right?</p> <p>4 MR. HONIK: Object to form.</p> <p>5 THE WITNESS: They are not the same</p> <p>6 thing, sir.</p> <p>7 BY MR. GOLDBERG:</p> <p>8 Q Okay. If consumers would have paid</p> <p>9 more for a different drug because</p> <p>10 valsartan -- because the at-issue valsartan were not</p> <p>11 sold, doesn't -- wouldn't that have mattered to your</p> <p>12 analysis?</p> <p>13 MR. HONIK: Object to the form, asked</p> <p>14 and answered, improper hypothetical, facts not</p> <p>15 in evidence.</p> <p>16 You can answer.</p> <p>17 THE WITNESS: Thank you.</p> <p>18 You have asked this question four</p> <p>19 times, and I have already answered it. But I'm</p> <p>20 happy to answer it again.</p> <p>21 Again, injury occurs at the time of</p> <p>22 the accident, at the time of -- at the time of</p> <p>23 the accident. Whether consumers would have</p> <p>24 gone on to buy something else after the injury</p> <p>25 occurred is of no moment. There was an</p>
<p style="text-align: right;">Page 195</p> <p>1 THE COURT REPORTER: That consumers...</p> <p>2 THE WITNESS: And end-payors or</p> <p>3 insurers didn't know about.</p> <p>4 Injury occurs -- in other words, if</p> <p>5 you get hit by a car, injury occurs at the time</p> <p>6 of the car, being hit. If people go elsewhere</p> <p>7 after they hit their -- after their car was</p> <p>8 hit, maybe they buy a new car or it's more</p> <p>9 costly, maybe they go without a car all</p> <p>10 together, that's -- that's not related to my</p> <p>11 calculation. It's of no moment. The</p> <p>12 economic --</p> <p>13 BY MR. GOLDBERG:</p> <p>14 Q You --</p> <p>15 A Hold on. The economic loss occurs at</p> <p>16 the time of injury.</p> <p>17 Q You said that this drug should not</p> <p>18 have been sold to those consumers, right?</p> <p>19 A That's not what I said, sir.</p> <p>20 Q So the drug could have been sold to</p> <p>21 consumers?</p> <p>22 MR. HONIK: Object to form.</p> <p>23 THE WITNESS: That's not what I said</p> <p>24 either, sir.</p> <p>25</p>	<p style="text-align: right;">Page 197</p> <p>1 economic loss. People bought things that</p> <p>2 shouldn't -- they -- that under the assumptions</p> <p>3 that were given to me, Counsel, should not have</p> <p>4 entered into the legitimate class of trade.</p> <p>5 BY MR. GOLDBERG:</p> <p>6 Q Okay. So I just asked you, your</p> <p>7 testimony is that these drugs should not have</p> <p>8 entered into the class of trade, right?</p> <p>9 A No. What I was asked --</p> <p>10 Q And my question is --</p> <p>11 A No. What I was asked to assume is</p> <p>12 that these products were adulterated and misbranded.</p> <p>13 If a product is adulterated and misbranded,</p> <p>14 according to U.S. regulation and pharmaceutical</p> <p>15 manufacturers, they are not allowed to enter into</p> <p>16 the U.S. class of trade. And therefore, there was</p> <p>17 no supply.</p> <p>18 Q Okay.</p> <p>19 A Injury occurs because these</p> <p>20 products -- these contaminated products entered into</p> <p>21 the U.S. class of trade and people bought them. And</p> <p>22 insurers purchased -- insurers paid for them. The</p> <p>23 economic loss arising, therefore, from the purchase</p> <p>24 of products that, under this theory of damages,</p> <p>25 should not have occurred.</p>



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<p style="text-align: right;">Page 198</p> <p>1 What people would have done after the</p> <p>2 injury, they switched products to another</p> <p>3 prescription drug, they managed their hypertension</p> <p>4 by diet and exercise, they underwent stent therapy,</p> <p>5 all of those other things are of no moment to my</p> <p>6 assessment of economic loss.</p> <p>7 BY MR. GOLDBERG:</p> <p>8 Q I'm not talking about after the injury</p> <p>9 at this point. I'm talking about instead of the</p> <p>10 injury. Instead of buying the at-issue valsartan</p> <p>11 because it was not on the market and a consumer</p> <p>12 bought a different ARB or a different drug and paid</p> <p>13 more for that, that doesn't matter to your -- would</p> <p>14 have paid more for that, that doesn't matter to your</p> <p>15 analysis?</p> <p>16 MR. HONIK: Objection, asked and</p> <p>17 answered, improper hypothetical.</p> <p>18 THE WITNESS: So -- I mean, really the</p> <p>19 alternative here is not -- is that the</p> <p>20 manufacturers actually sold unadulterated,</p> <p>21 properly branded product, not that consumers</p> <p>22 were forced to go elsewhere, in my economic</p> <p>23 analysis.</p> <p>24 BY MR. GOLDBERG:</p> <p>25 Q In an economic analysis where a</p>	<p style="text-align: right;">Page 200</p> <p>1 they would have had to purchase some other drug,</p> <p>2 right?</p> <p>3 MR. HONIK: Object to the form. It's</p> <p>4 been asked and answered, I don't know, 15 times</p> <p>5 already.</p> <p>6 THE WITNESS: There are many, many</p> <p>7 treatments for hypertension and high blood</p> <p>8 pressure out there. Some of them are</p> <p>9 pharmaceutical. Some of them are other things.</p> <p>10 It's immaterial to my perspective. I am simply</p> <p>11 focused on the people who actually bought or</p> <p>12 insured the contaminated, misbranded and</p> <p>13 adulterated products at-issue in this matter.</p> <p>14 BY MR. GOLDBERG:</p> <p>15 Q Do you know the difference between</p> <p>16 compensatory damages and punitive damages?</p> <p>17 MR. HONIK: Object to the form,</p> <p>18 outside the scope, calls for an expert legal</p> <p>19 opinion.</p> <p>20 THE WITNESS: No. I'm not a lawyer.</p> <p>21 Maybe in my future life.</p> <p>22 BY MR. GOLDBERG:</p> <p>23 Q In your view, the damages you</p> <p>24 calculated, are you -- are you calculating damages</p> <p>25 to compensate consumers or their loss or deter</p>
<p style="text-align: right;">Page 199</p> <p>1 consumer would have taken a different drug instead</p> <p>2 of the at-issue valsartan, and they would have paid</p> <p>3 the same or more for that different drug, did the</p> <p>4 consumer have an economic injury?</p> <p>5 MR. HONIK: Objection, asked and</p> <p>6 answered, improper hypothetical.</p> <p>7 THE WITNESS: From my perspective, if</p> <p>8 the consumer did not buy adulterated or -- and</p> <p>9 misbranded, illegitimate valsartan products,</p> <p>10 they are not injured.</p> <p>11 So all of those people between 2012</p> <p>12 and 2018 that took Novartis-brand valsartan</p> <p>13 that was not recalled or contaminated, they are</p> <p>14 out of my class. They are out of the -- my</p> <p>15 calculation of damages.</p> <p>16 All of those people between 2012 and</p> <p>17 2018 that used other therapeutic modalities to</p> <p>18 treat their hypertension are of no moment to</p> <p>19 me, in my economic analysis.</p> <p>20 My economic analysis is only focused</p> <p>21 on the people who purchased adulterated and</p> <p>22 misbranded valsartan products that were</p> <p>23 ultimately recalled.</p> <p>24 BY MR. GOLDBERG:</p> <p>25 Q And if they didn't make that purchase,</p>	<p style="text-align: right;">Page 201</p> <p>1 manufacturers from making drugs that have</p> <p>2 adulterations or misbranding?</p> <p>3 MR. HONIK: Same objection to the</p> <p>4 extent it calls for a legal conclusion.</p> <p>5 You may answer.</p> <p>6 THE WITNESS: I'm sorry. I -- I</p> <p>7 didn't quite follow. Can you slow down and ask</p> <p>8 not a compound question, but in parts?</p> <p>9 BY MR. GOLDBERG:</p> <p>10 Q Turn to Paragraph 45 of your report.</p> <p>11 A So we're moving on? You're not going</p> <p>12 to ask that question?</p> <p>13 Q I'm moving on.</p> <p>14 A Oh, okay.</p> <p>15 Q Do you have Paragraph 45 up?</p> <p>16 A Uh-huh.</p> <p>17 Q In Paragraph 45, you write, "Assigning</p> <p>18 a non-zero value to non-safety and quality compliant</p> <p>19 products is perverse. To do so would be to</p> <p>20 incentivize and legitimize cheating and</p> <p>21 noncompliance by manufacturers and other members of</p> <p>22 the United States pharmaceutical supply chain."</p> <p>23 Did I read that correctly?</p> <p>24 A That's what it says.</p> <p>25 Q Is it your opinion that -- that the</p>

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<p style="text-align: right;">Page 202</p> <p>1 damages you calculated are intended to</p> <p>2 disincentivize manufacturers from cheating and</p> <p>3 noncompliance?</p> <p>4 MR. HONIK: Object to the form.</p> <p>5 BY MR. GOLDBERG:</p> <p>6 Q Well, let me put it another way.</p> <p>7 Are you -- are you suggesting that</p> <p>8 manufacturers should be deterred from cheating and</p> <p>9 noncompliance?</p> <p>10 A It is the U.S. government's position,</p> <p>11 evolving over time, and also pharmaceutical</p> <p>12 manufacturers' position, that the illegitimate,</p> <p>13 misbranded, adulterated, contaminated, criminal</p> <p>14 class of trade of prescription drugs should be</p> <p>15 minimized at, if at all, at all possibilities.</p> <p>16 There's 100 years of focus on reducing</p> <p>17 products that pick the pocket of consumers, don't do</p> <p>18 what they say or could even cause harm. To allow</p> <p>19 those products onto the market to legitimate this</p> <p>20 type of cheating, goes against U.S. policy and,</p> <p>21 frankly, the pharmaceutical industry's position, for</p> <p>22 the better part of many decades.</p> <p>23 BY MR. GOLDBERG:</p> <p>24 Q So in calculating the damages the way</p> <p>25 you have, are you taking into account the need to</p>	<p style="text-align: right;">Page 204</p> <p>1 damages associated with misconduct.</p> <p>2 BY MR. GOLDBERG:</p> <p>3 Q Right. So --</p> <p>4 A Myself -- I mean, from, again, an</p> <p>5 economic perspective, these products are worthless.</p> <p>6 The court has agreed. Consumers and third-party</p> <p>7 payors suffered an economic harm. And my analysis</p> <p>8 calculates that economic harm, which is the full</p> <p>9 price of the product that they paid at the pharmacy</p> <p>10 counter.</p> <p>11 Q Why do you -- why is it necessary for</p> <p>12 you to -- to say that a nonzero value is perverse</p> <p>13 and would incentivize to you? What -- what does</p> <p>14 that have to do with your economic calculation?</p> <p>15 A It goes -- because it goes -- because</p> <p>16 assigning a nonzero value goes against U.S. policy</p> <p>17 and the pharmaceutical companies' own position on</p> <p>18 the matter of illegitimate products for the better</p> <p>19 part of 50 -- and if you count from 1906, the better</p> <p>20 part of more than 100 years of U.S. policy. But,</p> <p>21 again, products that are illegitimate, that do not</p> <p>22 meet cGMP, that would not be allowed to come into</p> <p>23 the U.S. market, they have no economic value. And</p> <p>24 the court agrees with me.</p> <p>25 THE COURT REPORTER: And the -- I'm</p>
<p style="text-align: right;">Page 203</p> <p>1 deter manufacturers from wrongdoing, as you put it?</p> <p>2 MR. HONIK: Object to the form, calls</p> <p>3 for a legal conclusion, beyond the scope of her</p> <p>4 report.</p> <p>5 THE WITNESS: I'm sorry. I don't</p> <p>6 quite understand your question. Can you please</p> <p>7 repeat it?</p> <p>8 BY MR. GOLDBERG:</p> <p>9 Q In calculating -- in calculating the</p> <p>10 damages that you've calculated, are you trying to</p> <p>11 also account for some punishment, if you will, of</p> <p>12 manufacturers -- of the defendants for manufacturing</p> <p>13 drugs that had an impurity in it?</p> <p>14 MR. HONIK: Same objection. She's not</p> <p>15 a lawyer, beyond the scope.</p> <p>16 THE WITNESS: I'm sorry. I don't -- I</p> <p>17 don't quite understand what you mean. Am I</p> <p>18 trying to punish the manufacturers? Is that</p> <p>19 what you're asking?</p> <p>20 BY MR. GOLDBERG:</p> <p>21 Q Yes.</p> <p>22 MR. HONIK: Same objection.</p> <p>23 THE WITNESS: Again, that's no moment</p> <p>24 to my -- that has no moment in my opinions in</p> <p>25 this matter. I was asked to calculate economic</p>	<p style="text-align: right;">Page 205</p> <p>1 sorry.</p> <p>2 THE WITNESS: And the court agrees</p> <p>3 with me on that point.</p> <p>4 COURT REPORTER: Thank you.</p> <p>5 THE WITNESS: Thank you.</p> <p>6 BY MR. GOLDBERG:</p> <p>7 Q I just want to confirm, you have not</p> <p>8 made any attempt to consider whether a consumer</p> <p>9 would have paid a different co-payment for a</p> <p>10 different drug but for their purchase of valsartan?</p> <p>11 MR. HONIK: Object to the form.</p> <p>12 THE WITNESS: I already answered this</p> <p>13 question, sir.</p> <p>14 But, again, all I considered in my</p> <p>15 analysis is what consumers actually paid for</p> <p>16 these at-issue products.</p> <p>17 BY MR. GOLDBERG:</p> <p>18 Q And the same is true for TPPs? All</p> <p>19 you considered for end-payors or third-party payors</p> <p>20 is what they actually paid for the product?</p> <p>21 THE COURT REPORTER: Is what they</p> <p>22 actually...</p> <p>23 MR. GOLDBERG: Paid for the product.</p> <p>24 THE WITNESS: Correct.</p> <p>25</p>

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<p style="text-align: right;">Page 206</p> <p>1 BY MR. GOLDBERG:</p> <p>2 Q Just moving on into another area of</p> <p>3 your report --</p> <p>4 THE WITNESS: Excuse me. If we're</p> <p>5 moving on, before there's a question pending,</p> <p>6 do you mind if we take a break, please?</p> <p>7 MR. GOLDBERG: No, that's fine.</p> <p>8 THE VIDEOGRAPHER: The time is 4:41.</p> <p>9 We're going off the record.</p> <p>10 (Whereupon, a short break was taken.)</p> <p>11 THE VIDEOGRAPHER: The time is 4:52.</p> <p>12 This begins Media Unit Number 5. We're back on</p> <p>13 the record.</p> <p>14 BY MR. GOLDBERG:</p> <p>15 Q Dr. Conti, can you turn in your report</p> <p>16 to Paragraph 58?</p> <p>17 A I'm there.</p> <p>18 Q At the beginning of this paragraph,</p> <p>19 you say, "Plaintiffs' counsel have asked me to</p> <p>20 calculate damages for four different theories of</p> <p>21 liability against the manufacturer defendants and</p> <p>22 two different theories of liability and one theory</p> <p>23 of unjust enrichment against the defendant</p> <p>24 retailers."</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 208</p> <p>1 Again, the retailers are different. But --</p> <p>2 THE COURT REPORTER: But from the</p> <p>3 defendants...</p> <p>4 MR. HONIK: I think she said the</p> <p>5 retailers are different.</p> <p>6 THE WITNESS: Right. For the</p> <p>7 defendants, the measure of economic liability</p> <p>8 is the same. It's the price that was paid.</p> <p>9 And for the retailers, it's different.</p> <p>10 THE COURT REPORTER: Thank you.</p> <p>11 BY MR. GOLDBERG:</p> <p>12 Q And leaving aside unjust enrichment,</p> <p>13 in what way is -- is it different for the retailers?</p> <p>14 A Let's go down and talk about it.</p> <p>15 So the -- the retailers sold the</p> <p>16 product to consumers, and they obtained their own</p> <p>17 benefit from selling these products. So it's the</p> <p>18 economic loss or economic gain associated with the</p> <p>19 retailers' sale that's different than the</p> <p>20 defendants' sale.</p> <p>21 Q Okay. I'm not going to get into the</p> <p>22 economic damages for the retailers, at this point.</p> <p>23 I'm -- I'm going to leave that for somebody else.</p> <p>24 You have that -- you made that</p> <p>25 statement. I just wanted to clarify that one point.</p>
<p style="text-align: right;">Page 207</p> <p>1 A Yes.</p> <p>2 Q The unjust enrichment damages that you</p> <p>3 calculated, did you apply the same measure of</p> <p>4 damages to all of the different theories of</p> <p>5 liability?</p> <p>6 A They differ by the states included in</p> <p>7 the calculations.</p> <p>8 Q To your knowledge, is that the only</p> <p>9 difference that -- as between these different</p> <p>10 theories of liability?</p> <p>11 A Generally, yes. And then -- I mean,</p> <p>12 in terms of the defendants, the terms of the</p> <p>13 retailers, there's both data and --</p> <p>14 THE COURT REPORTER: And what? And</p> <p>15 what, Doctor?</p> <p>16 THE WITNESS: And states that are</p> <p>17 different from the retailers.</p> <p>18 BY MR. GOLDBERG:</p> <p>19 Q In terms of the measure of damages for</p> <p>20 all of the liability, leaving aside unjust</p> <p>21 enrichment, the measure of damages for all of them</p> <p>22 is the same, which is a full refund of the price</p> <p>23 paid at the point of sale?</p> <p>24 MR. HONIK: Object to the form.</p> <p>25 THE WITNESS: Correct. Yeah, correct.</p>	<p style="text-align: right;">Page 209</p> <p>1 In terms of the -- the manufacturer</p> <p>2 damages, you -- you relied -- you're relying on data</p> <p>3 from IQVIA? Am I correct?</p> <p>4 A Right. I'm relying on national sales</p> <p>5 by product, manufacturer, month, state and payment</p> <p>6 types of who the payor is. And I'm also relying on</p> <p>7 national data related to the co-payment amounts, or</p> <p>8 co-insurance amounts, that consumers paid. Again,</p> <p>9 by product, payor, state, month, year.</p> <p>10 Q And how did you get the data that you</p> <p>11 relied upon?</p> <p>12 A I instructed my staff to purchase the</p> <p>13 data on my behalf.</p> <p>14 THE COURT REPORTER: To purchase?</p> <p>15 THE WITNESS: To purchase, yes.</p> <p>16 BY MR. GOLDBERG:</p> <p>17 Q Did you provide a specific instruction</p> <p>18 as to what -- what parameters you were looking for</p> <p>19 for them to purchase?</p> <p>20 A I think I just made that clear in my</p> <p>21 previous answer, sir.</p> <p>22 I -- I look at IQVIA data every day in</p> <p>23 my research, and they are known as the gold standard</p> <p>24 for pharmaceutical sales of legitimate prescription</p> <p>25 drugs in the U.S. consumer market.</p>

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<p style="text-align: right;">Page 210</p> <p>1 Q Do you know whether there are any</p> <p>2 limitations to the IQVIA data you relied upon or</p> <p>3 purchased?</p> <p>4 A Oh, goodness, Mr. Goldberg, there are</p> <p>5 always limitations, but they are the gold standard.</p> <p>6 They are used by the pharmaceutical industry</p> <p>7 themselves for assessing sales of products both in</p> <p>8 their own market but also in competitor markets.</p> <p>9 And, you know, I am not aware of a product that is</p> <p>10 better.</p> <p>11 Q Do you know that there are some</p> <p>12 sources of data that IQVIA is not able to obtain and</p> <p>13 makes projections in place of the data that they</p> <p>14 can't obtain?</p> <p>15 A So the Xponent data that I used is</p> <p>16 comprised of approximately 92 percent of total</p> <p>17 prescription sales for legitimate consumer</p> <p>18 product -- legitimate pharmaceutical products in the</p> <p>19 U.S. class of trade. There are some holes in their</p> <p>20 audit, but with prescription manufacturers and</p> <p>21 pharmacies. But those are not holes that are</p> <p>22 particularly relevant to these specific products.</p> <p>23 What I mean by that is that we know</p> <p>24 that Xponent data does not have -- does not have</p> <p>25 good purview into drugs that are sold to some</p>	<p style="text-align: right;">Page 212</p> <p>1 data in -- in my report. I've also written -- I've</p> <p>2 used Xponent data for my own research in many, many</p> <p>3 different contexts. And so those limitations for</p> <p>4 this type of data are very well known. They're well</p> <p>5 characterized, and I cite those in my report, the</p> <p>6 fact that Xponent doesn't contain all consumer</p> <p>7 co-insurance.</p> <p>8 THE COURT REPORTER: Co-insurance...</p> <p>9 THE WITNESS: Co-payment amounts that</p> <p>10 consumers pay -- paid for these products is</p> <p>11 accounted for in a specific way in this</p> <p>12 analysis. Specifically, I took average</p> <p>13 insurance and co-payment amounts by product,</p> <p>14 month, year, manufacturer and applied that to</p> <p>15 the analysis --</p> <p>16 THE COURT REPORTER: The analysis...</p> <p>17 THE WITNESS: When appropriate.</p> <p>18 THE COURT REPORTER: One more time.</p> <p>19 THE WITNESS: When appropriate.</p> <p>20 COURT REPORTER: I'm sorry. Thank</p> <p>21 you.</p> <p>22 THE WITNESS: No problem. It's the</p> <p>23 end of a day.</p> <p>24 BY MR. GOLDBERG:</p> <p>25 Q From the IQVIA data, the Xponent data,</p>
<p style="text-align: right;">Page 211</p> <p>1 hospitals in the U.S. and some specialty pharmacies.</p> <p>2 But those are not -- these are</p> <p>3 not -- these products at-issue here are not really</p> <p>4 those drugs. It's largely drugs that are -- that</p> <p>5 are used in the inpatient setting to treat very,</p> <p>6 very sick people in the ICU and -- and otherwise.</p> <p>7 The retail class of trade from regular</p> <p>8 pharmacies like CVS and Walgreens are the -- are the</p> <p>9 products that are at-issue here and that -- in that</p> <p>10 class of trade.</p> <p>11 THE COURT REPORTER: That class of --</p> <p>12 that class of trade...</p> <p>13 THE WITNESS: That is at-issue in this</p> <p>14 math certificate.</p> <p>15 Xponent also doesn't capture all</p> <p>16 co-insurance and co-payment amounts. It</p> <p>17 captures approximately 80 percent that are</p> <p>18 purchased, not all that are purchased or all</p> <p>19 that are paid in the legitimate consumer --</p> <p>20 legitimate pharmaceutical market in the U.S.</p> <p>21 And my methods account for that.</p> <p>22 BY MR. GOLDBERG:</p> <p>23 Q How do your methods account for that?</p> <p>24 How do you explain that?</p> <p>25 A So I explain the limitations of this</p>	<p style="text-align: right;">Page 213</p> <p>1 you -- that data does not identify the specific</p> <p>2 patients who purchased valsartan, right?</p> <p>3 A It's inclusive of all patients that</p> <p>4 purchased valsartan or who prescribed and dispensed</p> <p>5 valsartan by definition.</p> <p>6 Q You can't use that data to identify</p> <p>7 any particular patient, right?</p> <p>8 A Correct, it is inclusive of all.</p> <p>9 Q And you can't use that data to</p> <p>10 identify any particular payor for valsartan?</p> <p>11 A That is -- that is incorrect.</p> <p>12 Q I thought - I thought I just heard you</p> <p>13 say that, so maybe I misheard you.</p> <p>14 A No.</p> <p>15 MR. HONIK: Wait. Wait. Wait for a</p> <p>16 question. Wait for a question.</p> <p>17 MR. GOLDBERG: Okay. I did mishear</p> <p>18 you. You said prescribe and dispense.</p> <p>19 BY MR. GOLDBERG:</p> <p>20 Q Does the IQVIA -- does the IQVIA data</p> <p>21 permit you to determine a particular class member's</p> <p>22 damages in this case?</p> <p>23 A The IQVIA data allows me to</p> <p>24 disaggregate sales of products by product, and by</p> <p>25 payor type.</p>

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<p style="text-align: right;">Page 214</p> <p>1 Q So no, you couldn't get to a  2 particular class member's data in this case through  3 the IQVIA data?  4 A I'm not sure I understand what you  5 mean by "class member." I mean, my -- my -- excuse  6 me. My understanding is that class members are, by  7 definition, defined buy payor type and also by  8 state.  9 Q Did you look at the IQVIA data and  10 determine what a particular consumer paid for  11 valsartan in cash?  12 MR. HONIK: Objection, asked and  13 answered.  14 THE WITNESS: It is inclusive of all  15 payments made by all consumers who are  16 presumable class members, and it's inclusive of  17 all payors that are inclusive of all payor  18 class members by month, state, year and  19 product.  20 BY MR. GOLDBERG:  21 Q Right. It doesn't get -- it doesn't  22 allow you to drill down to what a particular  23 consumer paid --  24 MR. HONIK: Do you mean without more?  25 Do you mean without more? Is that what you</p>	<p style="text-align: right;">Page 216</p> <p>1 specific payor. There are payor variables that  2 are pretty specific in the IQVIA data that  3 would allow me to characterize or identify  4 payors to a pretty specific degree.  5 BY MR. GOLDBERG:  6 Q What -- what is that specific degree?  7 A So I know where the payor is located,  8 what the payor's type is, and also what the payor's  9 name is for each individual product, month, year,  10 combination.  11 Q And by "payor," you're -- when you're  12 talking about -- you're talking about third-party  13 payors? When you're talking about getting to that  14 level of specificity, you're talking about  15 third-party payors or consumers?  16 A Third-party payors.  17 Q When you calculated average co-pays,  18 did you exclude co-pays -- 0-dollar co-pays in your  19 averaging?  20 MR. HONIK: Object to form.  21 THE WITNESS: I did not.  22 BY MR. GOLDBERG:  23 Q Is it the -- you just mentioned the --  24 the specificity with respect to TPPs. Is it your  25 view and understanding that all TPPs are advised in</p>
<p style="text-align: right;">Page 215</p> <p>1 mean, Seth?  2 MR. GOLDBERG: The question is  3 pending. I asked her about the Xponent data.  4 MR. HONIK: The problem is you've  5 asked it six times. I think she's answered it  6 as best she can. It's aggregate data is what  7 she's saying, and if you're asking --  8 MR. GOLDBERG: Are you testifying?  9 MR. HONIK: No. I'm just -- I think  10 you're going round and round.  11 But answer it as best you can.  12 THE WITNESS: Can you restate the  13 question, please?  14 BY MR. GOLDBERG:  15 Q The IQVIA data doesn't allow you to  16 drill down to what a particular class member paid  17 for at-issue valsartan?  18 MR. HONIK: Object to form, asked and  19 answered.  20 THE WITNESS: So, again, IQVIA's data  21 is specific to the product, month, year, payor  22 and state. And therefore -- and across all the  23 U.S. And therefore, it is -- it is -- it  24 contains in it every single potential class  25 member, whether they be a consumer or a</p>	<p style="text-align: right;">Page 217</p> <p>1 the IQVIA data?  2 A Well, the TPPs that I used for my  3 damage calculations met certain criteria.  4 Q What were those criteria?  5 A They're listed in my report.  6 Q Do you want to point to that?  7 A Sure, give me a second. Are you with  8 me?  9 Q Uh-huh.  10 A Okay, great. Page 29 of my report,  11 Paragraph 75, I define end-payor class damages. And  12 in Paragraph 75, I say, "...my calculation of  13 End-Payor Class damages includes three parts.  14 First, I limit both sets of Xponent data" -- both  15 the total national sales but also co-insurance  16 co-payments, they are actually two separate  17 datasets, "to exclude cash paid claims as well as  18 claims paid by the following state and federal  19 government entities (based on plan categories or  20 plan names in the Xponent data):"  21 "CHIP," Children's Health Insurance  22 Program, "federal assistance programs, Medicare  23 Parts A and B...", Medicare Part A is for hospital  24 plans, we were just talking about that before.  25 We're not talking about that class of trade here.</p>



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<p style="text-align: right;">Page 218</p> <p>1 And Medicare Part B, which is the insurance that 2 covers drugs that are infused or injected or 3 otherwise given to patients in a medical office. 4 State insurance programs -- assistance 5 programs, to include ADAP. ADAPs are state 6 assistance programs with people with HIV or other 7 infectious disease. Tricare, a military program -- 8 a military insurance program, department of Veterans 9 Affairs, another -- another military insurance 10 program, the Indian Health Service, state employee 11 plans, which include city and county plans -- sorry. 12 Not -- I didn't exclude city and county plans. And 13 Workers Compensation plans. 14 And you can see there's a note that 15 follows that. This occurs for 464 distinct 16 combinations of manufacturer, product, state and 17 month out of the 36,000ish -- oh, no, I'm sorry. 18 Right. It includes the valsartan class definitions 19 and exclusions. It's -- it's Footnote 17. 20 Q Why -- why did you -- what do you 21 understand your reason for excluding the claims paid 22 by those state and federal government entities? Why 23 did you want to exclude those from your 24 calculations? 25 A That was a --</p>	<p style="text-align: right;">Page 220</p> <p>1 government payors should be included in your damages 2 calculation? 3 MR. HONIK: Same objection as 4 previously stated. 5 THE WITNESS: It's by instruction of 6 counsel. 7 BY MR. GOLDBERG: 8 Q Whatever counsel told you to 9 calculate, that's what you calculated? 10 MR. HONIK: Objection to form. 11 THE WITNESS: That is not what I said, 12 sir. 13 BY MR. GOLDBERG: 14 Q Whatever counsel told you to include 15 is what you included, and what they told you to 16 exclude is what you tried to exclude. 17 MR. HONIK: Object to form. That is 18 not her testimony. 19 THE WITNESS: That is not my 20 testimony, sir. 21 BY MR. GOLDBERG: 22 Q Going down into this paragraph, you 23 say, "I did not exclude Medicare Part D plan 24 sponsors because they are private entities that 25 offer prescription drug benefits, and I did not</p>
<p style="text-align: right;">Page 219</p> <p>1 THE COURT REPORTER: That was a what? 2 THE WITNESS: A part of the 3 instruction of counsel. 4 BY MR. GOLDBERG: 5 Q Do you understand that you're -- 6 you're excluding them to avoid including claims in 7 your calculation by payors who are excluded from the 8 GPP class definition, such as -- 9 THE COURT REPORTER: Such as -- sorry. 10 Hold on. I didn't hear the end of the 11 question. 12 MR. HONIK: She needs you to repeat 13 it, Seth, the last part, the last part. Jamie, 14 read what you have. 15 MR. GOLDBERG: Such as government 16 payors. 17 MR. HONIK: Object to form and object 18 to the extent it calls for a legal conclusion 19 or expertise. 20 You can answer. 21 THE WITNESS: Thank you. 22 Again, the exclusion was based on 23 instruction from counsel. 24 BY MR. GOLDBERG: 25 Q Do you have any view as to whether</p>	<p style="text-align: right;">Page 221</p> <p>1 exclude federal employee plans because they are 2 provided by private insurers." 3 A There's other things in that sentence 4 as well that you kind of skipped over. 5 Q Again, just focusing on the first part 6 of the sentence, Medicare -- the Medicare Part D 7 plan, part of that -- 8 A Do you mean the second part of the 9 sentence? Do you mean the second? 10 Q No. 11 A I mean, I'm just trying to follow, 12 sir. 13 So the first part of the sentence, 14 which you kind of skipped over half of it, I said, 15 "I also excluded prescriptions for which the 16 consumer is not covered by insurance but uses a 17 coupon that reduces their total costs, including 18 discount cards and vouchers. I did not exclude 19 Medicare Part D plan sponsors because they are 20 private entities that offer prescription drug 21 benefits, and I did not exclude federal employee 22 plans because they are provided by private 23 insurers." 24 Q I want to focus on the Medicare Part D 25 plan part of that. Okay?</p>

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<p style="text-align: right;">Page 222</p> <p>1 In that part of this paragraph, you're</p> <p>2 referring to third-party payors who are private</p> <p>3 insurers that have, as part of their product mix, a</p> <p>4 Medicare Part D plan; am I correct?</p> <p>5 A I don't quite understand your</p> <p>6 question. I'm sorry.</p> <p>7 Q Your sentence says, "I did not exclude</p> <p>8 Medicare part D plan sponsors because they are</p> <p>9 private entities that offer prescription drug</p> <p>10 benefits."</p> <p>11 My question is, you're referring to</p> <p>12 third-party payors who have Medicare Part D plans,</p> <p>13 private entities that have Medicare Part D plans as</p> <p>14 part of their -- their offerings to consumers,</p> <p>15 correct?</p> <p>16 A No.</p> <p>17 MR. HONIK: Object to form.</p> <p>18 BY MR. GOLDBERG:</p> <p>19 Q What are you referring to then?</p> <p>20 A So there are third-party payors, so,</p> <p>21 for example, Aetna. Aetna includes sales plans that</p> <p>22 are to consumers that are -- for people who are</p> <p>23 employed, for people who are in the individual</p> <p>24 insurance market, and also sells plans to consumers</p> <p>25 who may be Medicare eligible.</p>	<p style="text-align: right;">Page 224</p> <p>1 BY MR. GOLDBERG:</p> <p>2 Q Do you know whether those Part D plan</p> <p>3 sponsors that are commercial entities receive</p> <p>4 funding from the federal government?</p> <p>5 MR. HONIK: Object to form.</p> <p>6 THE WITNESS: They do under certain</p> <p>7 circumstances, but that's separate from the</p> <p>8 premiums that are paid by actual seniors for</p> <p>9 their insurance coverage.</p> <p>10 BY MR. GOLDBERG:</p> <p>11 Q Did you factor into your calculation</p> <p>12 any amounts that the federal government might have</p> <p>13 paid to private commercial third-party payors that</p> <p>14 offer Medicare Part D plans?</p> <p>15 MR. HONIK: Object to form, asked and</p> <p>16 answered.</p> <p>17 THE WITNESS: Again, consumers who are</p> <p>18 seniors are required to have -- to purchase</p> <p>19 prescription drug benefit from these Part D</p> <p>20 plans. They pay premiums. And then they have</p> <p>21 an insurance schedule on how much they are</p> <p>22 required to pay out-of-pocket for each and</p> <p>23 every prescription drug that is dispensed to</p> <p>24 them.</p> <p>25 Since injury occurs at the point of</p>
<p style="text-align: right;">Page 223</p> <p>1 A Medicare Part D plan is one that is</p> <p>2 sold by commercial insurers such as Aetna, United,</p> <p>3 et cetera, to seniors who are required to have</p> <p>4 Part D prescription drug benefits.</p> <p>5 Q Are you familiar with how</p> <p>6 Medicare Part D claims are reimbursed?</p> <p>7 A I am. But how is that relevant to</p> <p>8 this case, sir?</p> <p>9 Q Do you believe that the TPPs that</p> <p>10 provide Medicare Part D plans bear 100 percent of</p> <p>11 the cost of reimbursement for enrollees of those</p> <p>12 plans?</p> <p>13 MR. HONIK: Object to the form.</p> <p>14 THE WITNESS: I think -- okay. So</p> <p>15 what insurance -- what defines a commercial</p> <p>16 insurance plan is that consumers, you and me,</p> <p>17 my mother, who is Medicare eligible, pay</p> <p>18 premiums to a commercial insurer, as opposed to</p> <p>19 paying premiums or are otherwise insured by a</p> <p>20 private -- by a public insurer.</p> <p>21 Part D plans receive premiums from the</p> <p>22 people who are insured by them, just like the</p> <p>23 plans that are sold to non-seniors receive</p> <p>24 premiums from the people who are insured by</p> <p>25 them. They're exactly the same.</p>	<p style="text-align: right;">Page 225</p> <p>1 sale, it is the insurance price that is paid,</p> <p>2 both by the payor itself, and by the consumer</p> <p>3 at the pharmacy counter, than it is at issue in</p> <p>4 my damage calculation.</p> <p>5 Whether or not there are side payments</p> <p>6 or subsidies or anything else that those plans</p> <p>7 or those consumers may face, is of no moment to</p> <p>8 my economic analysis.</p> <p>9 And the way I like to think about it</p> <p>10 is that if I am injured in a car accident, if I</p> <p>11 receive side payments from my mother, for</p> <p>12 example, to pay for my car repair or pay for</p> <p>13 myself to the -- receive medical treatment,</p> <p>14 that has nothing to do with the economic loss I</p> <p>15 suffered from having -- from being injured,</p> <p>16 from being in a car accident. And therefore,</p> <p>17 those side payments, even if they exist, are of</p> <p>18 no moment in my analysis. Injury occurs at the</p> <p>19 point of sale.</p> <p>20 COURT REPORTER: I'm sorry?</p> <p>21 THE WITNESS: Injury occurs at the</p> <p>22 point of sale.</p> <p>23 BY MR. GOLDBERG:</p> <p>24 Q So did you not factor in that</p> <p>25 third-party payors who offer Medicare Part D plans</p>

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<p style="text-align: right;">Page 226</p> <p>1 receive respective subsidies from the federal 2 government to cover their beneficiaries' 3 prescription drug purchases? 4 MR. HONIK: Object to form, asked and 5 answered. 6 THE WITNESS: Again, they only do so 7 sometimes in a prospective way. Largely, those 8 payments are made retrospectively and only for 9 certain types of prescription drugs. I have 10 not seen any evidence to suggest that the 11 valsartan products at issue in this case were 12 ones that were either directly paid by the 13 federal government or were part of those 14 retrospective payments that the government 15 might have made. 16 Usually, those type of direct 17 payments, or retrospective payments, are made 18 for really expensive specialty drugs used in 19 the cancer setting, in the immunology setting, 20 with prices of \$10,000 or more for treatment. 21 That's not what we're talking about in this 22 case. 23 BY MR. GOLDBERG: 24 Q But you haven't considered any amount 25 that the federal government might have paid to any</p>	<p style="text-align: right;">Page 228</p> <p>1 donut hole, they would have to spend something 2 like \$400, maybe a little bit more, in order to 3 even get into that phase of the benefit. 4 And I think the limit for catastrophic 5 coverage during this time period is more like 6 \$8,000. 7 COURT REPORTER: Is what? 8 THE WITNESS: Is more like \$8,000. 9 BY MR. GOLDBERG: 10 Q Yes or no -- 11 A It's not a yes or no question, sir. 12 Q This -- let me ask the question. 13 Yes or no, did you factor in any 14 payments made by the federal government to 15 third-party payors offering Medicare Part D plans? 16 Yes or no, did you factor that into your 17 calculation? 18 MR. HONIK: Object to form, asked and 19 answered. You can't direct the witness to 20 answer it in a manner in which you'd like. If 21 she tells you she's unable to answer it yes or 22 no, she can provide an answer. 23 Please do so. 24 THE WITNESS: Thank you. 25 So, again, the vast majority of</p>
<p style="text-align: right;">Page 227</p> <p>1 TPPs for -- in connection with their Medicare Part D 2 plans, right? 3 MR. HONIK: Object to the form, asked 4 and answered. 5 THE WITNESS: Again, I'm not aware of 6 any evidence to suggest that third-party payors 7 receive direct payments from the federal 8 government to underwrite any senior's sale or 9 purchase of valsartan at-issue products in this 10 case. 11 Again, usually those type of payments 12 in the catastrophic limit, for example, of 13 Part D, those are payments that are made either 14 retrospectively after the injury would have 15 occurred, or are for products that are not at 16 issue here. They're for drugs that are really 17 expensive and for which patients have blown 18 through the donut hole, are in the catastrophic 19 phase of their benefit design. That's -- 20 that's not what we're talking about here. 21 These are generic products that are -- 22 I think, you know, the average co-insurance 23 amount that I -- that I calculated was 24 somewhere on the order of \$12. Consumers 25 could, I think -- to get out of the -- into the</p>	<p style="text-align: right;">Page 229</p> <p>1 seniors who have prescription drug benefits 2 through Part D -- my mother is one of them. I 3 might know more about this than I should. They 4 pay premiums, and they also pay at the pharmacy 5 counter when they get a prescription at a 6 low-cost generic, such as the at-issue 7 valsartan in this case. 8 So that -- whether -- if those TPPs, 9 those third-party payors receive side payments 10 from the federal government, or other types of 11 payments from the federal government, is really 12 not material to this because there's no 13 evidence to suggest that low-cost generics are 14 ever in that phase of the benefit where the 15 third-party payor would actually pay the side 16 payments. 17 BY MR. GOLDBERG: 18 Q What do you understand the third-party 19 payors' point of sale to be? You mentioned the 20 consumer paying at the retail pharmacy. What do you 21 understand the TPPs' point of sale to be? 22 A When the consumer goes to fill their 23 prescription at the pharmacy counter, the pharmacy 24 runs a check on what insurance that patient has and 25 how much the patient needs to pay out of pocket.</p>

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<p>Page 230</p> <p>1 The point of sale for both, what the pharmacy 2 expects to receive from the consumer and what the 3 pharmacy expects to receive from the insurer is 4 exactly the same. 5 Those transactions occur within 6 seconds, and the pharmacy dispenses the product to a 7 consumer predicated on their existence of insurance 8 and the insurance saying that, yes, they will pay 9 for that product, dispense that beneficiary. It's 10 exactly the same. 11 Q We were -- you talked a lot about 12 value and therapeutic value of the at-issue 13 valsartan, what the consumers receive. And you 14 explained that there was an illegitimate supply for 15 at-issue valsartan, and therefore, even though there 16 was a demand, the drug was worthless. Is that the 17 same -- that worthless as to consumers, is that the 18 same as to third-party payors? 19 MR. HONIK: Object to the form. It's 20 a little bit -- 21 THE COURT REPORTER: I'm sorry. I 22 didn't hear the end of the question. 23 MR. HONIK: Sorry. You trailed off, 24 Seth. Just cover the -- 25</p>	<p>Page 232</p> <p>1 legitimate supply curve based on the assumptions 2 given to me by counsel. 3 Q And regardless of any benefit that a 4 TPP might have received, they got from their 5 insured's treatment with the at-issue valsartan, 6 your view is that the drug, as to that TPP, is still 7 worthless? 8 MR. HONIK: Object to form, asked and 9 answered. 10 THE WITNESS: I'm sorry. I didn't -- 11 really did not follow your question. There's a 12 lot of compound phrases there. Can you please 13 restate? 14 BY MR. GOLDBERG: 15 Q Regardless of any benefit that a TPP 16 might have perceived they received from their 17 insured's treatment with the at-issue valsartan, as 18 to that TPP, the drug is still worthless in your 19 view? 20 MR. HONIK: Object to the form, asked 21 and answered. 22 THE WITNESS: I don't understand what 23 you mean by a third-party payor receiving value 24 or benefit. Can you please define? 25</p>
<p>Page 231</p> <p>1 BY MR. GOLDBERG: 2 Q Is your view that there was an 3 illegitimate supply of valsartan as to consumers the 4 same for TPPs? 5 MR. HONIK: Object to form. 6 THE WITNESS: I don't think that's the 7 question you asked me, sir. 8 BY MR. GOLDBERG: 9 Q Well, I'm asking you that question. 10 A Okay. Can you go back and ask that 11 question again because I was focused on trying to 12 get clarity on the previous question that you asked. 13 Q Is your view that there was an 14 illegitimate supply of at-issue valsartan as to 15 consumers the same for TPPs? 16 A I was asked to assume that there is no 17 legitimate supply of adulterated and misbranded 18 prescription drugs for the at-issue valsartan 19 products between 2012 and 2018 in order to calculate 20 damages in this matter. For both consumers and 21 end-party payors that are -- that are included in 22 the class. 23 As we have already discussed, my 24 assessment assumes there's a demand curve. What my 25 assessment does not do is assume that there is a</p>	<p>Page 233</p> <p>1 BY MR. GOLDBERG: 2 Q Does a third-party payor receive a 3 value when its insureds are effectively treated with 4 a drug? 5 MR. HONIK: Object to the form. 6 They're not consuming -- they're not consuming 7 drugs. I think -- I think that's the problem, 8 Seth. 9 THE WITNESS: I don't follow. 10 MR. HONIK: You're kind of mixing 11 apples and oranges, I think. 12 THE WITNESS: There is no therapeutic 13 value to the third-party payor. 14 BY MR. GOLDBERG: 15 Q Does a third-party payor -- 16 A I don't even understand that, that 17 context. 18 Q Does a third-party payor receive an 19 economic value when its insureds are effectively 20 treated with at-issue valsartan? 21 MR. HONIK: Object to the form of the 22 question. 23 THE WITNESS: That's a lot -- again, 24 that's a lot of compound statements and 25 assumptions that you're making.</p>

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<p style="text-align: right;">Page 234</p> <p>1 BY MR. GOLDBERG:</p> <p>2 Q Well, let's just --</p> <p>3 A Again, third-party payors are not</p> <p>4 consumers, so they don't receive any therapeutic</p> <p>5 benefit from their beneficiaries consuming a</p> <p>6 product. And they certainly don't receive any --</p> <p>7 any benefit from consumers consuming a product that</p> <p>8 was adulterated and misbranded and may have actually</p> <p>9 caused clinical harm.</p> <p>10 Q Do you have any evidence that there</p> <p>11 was any clinical harm in this case from 2012 to</p> <p>12 2018?</p> <p>13 MR. HONIK: Object to the form,</p> <p>14 outside the scope.</p> <p>15 THE WITNESS: I don't think that's the</p> <p>16 issue. Again, that's why -- that's why I don't</p> <p>17 understand at all. I mean --</p> <p>18 BY MR. GOLDBERG:</p> <p>19 Q Just --</p> <p>20 A Okay. I'm sorry, Mr. Goldberg.</p> <p>21 You've interrupted me over and over again today.</p> <p>22 There is a word for that, it's mansplaining. Please</p> <p>23 let me finish.</p> <p>24 So, again, I don't understand the idea</p> <p>25 that third-party payors could benefit from consumers</p>	<p style="text-align: right;">Page 236</p> <p>1 And in Paragraph 52, you describe</p> <p>2 third-party payors.</p> <p>3 A Is that a question?</p> <p>4 Q Are you aware -- are you familiar with</p> <p>5 the different contractual arrangements that</p> <p>6 third-party payors have in terms of sourcing and</p> <p>7 paying for and being reimbursed for at-issue</p> <p>8 valsartan?</p> <p>9 A I think I'm -- that was a compound</p> <p>10 question, right?</p> <p>11 So what do you mean by third-party</p> <p>12 payors being paid for?</p> <p>13 Q Okay. Are you -- are you familiar</p> <p>14 with the contractual arrangements that third-party</p> <p>15 payors have, say, with pharmacy benefit managers?</p> <p>16 A Pharmacy benefit managers are a member</p> <p>17 of the supply chain of prescription drugs in the</p> <p>18 United States. And some payors have their own PBM,</p> <p>19 so there is no contractual relationship. They all</p> <p>20 have a PBM, and some third-party payors contract</p> <p>21 with PBMs to provide fund services to their</p> <p>22 beneficiaries.</p> <p>23 Q These are differences from third-party</p> <p>24 payor to third-party payor, right?</p> <p>25 A I really don't understand that</p>
<p style="text-align: right;">Page 235</p> <p>1 taking adulterated prescription drugs. That should</p> <p>2 not -- that, I was asked to assume, should not have</p> <p>3 entered into the U.S. class of trade. That</p> <p>4 is -- that is your assumption of your -- underlying</p> <p>5 your hypothetical question.</p> <p>6 THE COURT REPORTER: Seth, when you</p> <p>7 get to a good point, can we take five minutes,</p> <p>8 please?</p> <p>9 MR. GOLDBERG: Yes, this is a good</p> <p>10 time.</p> <p>11 MR. HONIK: Okay. Let's take five,</p> <p>12 and then we will reassess --</p> <p>13 THE VIDEOGRAPHER: The time is 5:37.</p> <p>14 This ends Media Unit Number 5. We're going off</p> <p>15 the record.</p> <p>16 (Whereupon, a short break was taken.)</p> <p>17 THE VIDEOGRAPHER: The time is 5:50.</p> <p>18 This begins Media Unit Number 6. We're back on</p> <p>19 the record.</p> <p>20 BY MR. GOLDBERG:</p> <p>21 Q So in your report, you talk about the</p> <p>22 different levels of the pharmaceutical supply chain?</p> <p>23 A Where are you referring, Mr. Goldberg?</p> <p>24 Q I'm going to get you there. It starts</p> <p>25 at Page 19 and goes through to Page 22.</p>	<p style="text-align: right;">Page 237</p> <p>1 question. I'm sorry.</p> <p>2 Q Each third-party payor has its own set</p> <p>3 of contractual arrangements that control its</p> <p>4 distribution and -- and insurance of at-issue</p> <p>5 valsartan?</p> <p>6 MR. HONIK: Object to form.</p> <p>7 THE WITNESS: That is not my</p> <p>8 testimony. Like I just said, the biggest</p> <p>9 payors in the U.S. are their own PBM. They own</p> <p>10 their own PBM, so there is no contractual</p> <p>11 relationship. They are the PBM. There are</p> <p>12 some payors that contract for external PBM</p> <p>13 services, and there's some third-party payors</p> <p>14 that directly go with pharmacies to dispense</p> <p>15 drugs to their beneficiaries.</p> <p>16 BY MR. GOLDBERG:</p> <p>17 Q Are there other -- are there other</p> <p>18 arrangements that you can think of that third-party</p> <p>19 payors have?</p> <p>20 A Not -- I mean, that -- those are</p> <p>21 general buckets that characterize third-party</p> <p>22 payment for prescription drugs sold in the pharmacy</p> <p>23 setting.</p> <p>24 Q Do third-party payors pay pharmacies</p> <p>25 directly, to your understanding?</p>



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<p style="text-align: right;">Page 238</p> <p>1 A They can and do or dispense</p> <p>2 prescription drugs every day.</p> <p>3 Q Are you aware of any contractual</p> <p>4 arrangements a third-party payor was not able to</p> <p>5 keep and satisfy as a result of the sale of at-issue</p> <p>6 valsartan?</p> <p>7 MR. HONIK: Object to form, outside</p> <p>8 the scope.</p> <p>9 THE WITNESS: I don't understand your</p> <p>10 question at all. I'm sorry, what does "keep"</p> <p>11 mean here?</p> <p>12 BY MR. GOLDBERG:</p> <p>13 Q Are you aware of any -- any</p> <p>14 arrangement a third-party payor has that it's not</p> <p>15 able to satisfy as a result of at-issue valsartan?</p> <p>16 MR. HONIK: Same objection.</p> <p>17 THE WITNESS: I don't know what you're</p> <p>18 referring to. I'm sorry. I don't follow.</p> <p>19 BY MR. GOLDBERG:</p> <p>20 Q Are you aware of whether any</p> <p>21 third-party payor did not -- ended up reaching a</p> <p>22 contract with a pharmacy benefits manager because of</p> <p>23 their covering at-issue valsartan?</p> <p>24 MR. HONIK: Same objection.</p> <p>25 And to the extent it calls for a legal</p>	<p style="text-align: right;">Page 240</p> <p>1 known contaminants of nitrosamines in these</p> <p>2 products.</p> <p>3 BY MR. GOLDBERG:</p> <p>4 Q Does it matter to your analysis that</p> <p>5 the specifications for valsartan during that time</p> <p>6 period did not require -- or did not include</p> <p>7 nitrosamines?</p> <p>8 MR. HONIK: Object to the form,</p> <p>9 hypothetical, inappropriate, facts not in</p> <p>10 evidence.</p> <p>11 You can answer.</p> <p>12 THE WITNESS: Again, the manufacturers</p> <p>13 themselves attested on their drug forms to the</p> <p>14 Food and Drug Administration that there was no</p> <p>15 contamination.</p> <p>16 BY MR. GOLDBERG:</p> <p>17 Q My question is, does it matter to your</p> <p>18 analysis that there -- that nitrosamines were not</p> <p>19 included in the specifications for valsartan from</p> <p>20 2012 to July 2018?</p> <p>21 MR. HONIK: Object to the form,</p> <p>22 improper hypothetical. Those are not</p> <p>23 dispensed.</p> <p>24 You may answer.</p> <p>25 THE WITNESS: Again, my understanding</p>
<p style="text-align: right;">Page 239</p> <p>1 conclusion, you may answer if you understand.</p> <p>2 THE WITNESS: I don't understand the</p> <p>3 question. I'm sorry. Like I said before,</p> <p>4 there are a variety of different types of</p> <p>5 arrangements. Many third-party payors -- many</p> <p>6 insurers pay pharmacies directly for dispensed</p> <p>7 drugs. Some third-party payors may contract</p> <p>8 with pharmacy benefit managers for the coverage</p> <p>9 of some drugs.</p> <p>10 I think what you're referring to is</p> <p>11 the latter category, but I really -- I don't</p> <p>12 understand your question. I don't know what</p> <p>13 you mean by "keep a contract" in this setting.</p> <p>14 BY MR. GOLDBERG:</p> <p>15 Q Does it matter to your analysis that</p> <p>16 different -- there were different levels of NDMA or</p> <p>17 NDEA in the manufacturer defendants' valsartan?</p> <p>18 MR. HONIK: Object to the form. Facts</p> <p>19 not in evidence.</p> <p>20 You may answer.</p> <p>21 THE WITNESS: Thank you.</p> <p>22 So my understanding is, during the</p> <p>23 at-issue time period, between January 2012 and</p> <p>24 2018, the manufacturers attested to the</p> <p>25 Food and Drug Administration that there were no</p>	<p style="text-align: right;">Page 241</p> <p>1 is that the manufacturers of the at-issue</p> <p>2 valsartan products attested to the</p> <p>3 Food and Drug Administration over and over</p> <p>4 again that these products were manufactured to</p> <p>5 be compliant, at minimum, with cGMP. And they</p> <p>6 also attested to the fact that there were no</p> <p>7 contamination of nitrosamines in these at-issue</p> <p>8 valsartan.</p> <p>9 MR. GOLDBERG: I see we're at</p> <p>10 6 o'clock?</p> <p>11 MR. HONIK: Yeah. Why don't we go off</p> <p>12 the record, video and steno?</p> <p>13 THE VIDEOGRAPHER: The time is</p> <p>14 6 o'clock. We're going off the record.</p> <p>15 (Whereupon, the deposition concluded</p> <p>16 at 6 o'clock p.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">Page 242</p> <p style="text-align: center;">C E R T I F I C A T E</p> <p>I, Jamie I. Moskowitz, a Shorthand (Stenotype) Reporter and Notary Public, do hereby certify that the foregoing Deposition, of the witness, RENA M. CONTI, Ph.D., taken at the time and place aforesaid, is a true and correct transcription of my shorthand notes.</p> <p>I further certify that I am neither counsel for nor related to any party to said action, nor in any way interested in the result or outcome thereof.</p> <p>IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of February, 2022.</p> <p><i>Jamie Ilyse Moskowitz</i>          Jamie Ilyse Moskowitz          License No. XI01658</p>	<p style="text-align: right;">Page 244</p> <p>1 In Re: Valsartan, Losartan, Et Al          2 Rena Conti, PH.D (#5064909)          3 E R R A T A S H E E T          4 PAGE____ LINE____ CHANGE_____          5 _____          6 REASON_____          7 PAGE____ LINE____ CHANGE_____          8 _____          9 REASON_____          10 PAGE____ LINE____ CHANGE_____          11 _____          12 REASON_____          13 PAGE____ LINE____ CHANGE_____          14 _____          15 REASON_____          16 PAGE____ LINE____ CHANGE_____          17 _____          18 REASON_____          19 PAGE____ LINE____ CHANGE_____          20 _____          21 REASON_____          22 _____          23 _____          24 Rena Conti, PH.D Date          25 _____</p>
<p style="text-align: right;">Page 243</p> <p>1 Ruben Honik, Esq.          2 ruben@honiklaw.com          3 February 16, 2022.          4 RE: In Re: Valsartan, Losartan, et al.          5 2/10/22, Rena Conti, PH.D. (#5064909)          6 The above-referenced transcript is available for          7 review.          8 Within the applicable timeframe, the witness should          9 read the testimony to verify its accuracy. If there are          10 any changes, the witness should note those with the          11 reason, on the attached Errata Sheet.          12 The witness should sign the Acknowledgment of          13 Deponent and Errata and return to the deposing attorney.          14 Copies should be sent to all counsel, and to Veritext at          15 cs-ny@veritext.com          16          17 Return completed errata within 30 days from          18 receipt of testimony.          19 If the witness fails to do so within the time          20 allotted, the transcript may be used as if signed.          21          22 Yours,          23 Veritext Legal Solutions          24          25</p>	<p style="text-align: right;">Page 245</p> <p>1 In Re: Valsartan, Losartan, et al.          2 Rena Conti, PH.D (#5064909)          3 ACKNOWLEDGEMENT OF DEPONENT          4 I, Rena Conti, PH.D, do hereby declare that I          5 have read the foregoing transcript, I have made any          6 corrections, additions, or changes I deemed necessary as          7 noted above to be appended hereto, and that the same is          8 a true, correct and complete transcript of the testimony          9 given by me.          10 _____          11 _____          12 Rena Conti, PH.D Date          13 *If notary is required          14 SUBSCRIBED AND SWORN TO BEFORE ME THIS          15 _____ DAY OF _____, 20____.          16 _____          17 _____          18 _____          19 NOTARY PUBLIC          20          21          22          23          24          25</p>

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<b>&amp;</b>	<b>11:30</b> 57:16	<b>2</b>	177:4,4,11,12
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at [www.veritext.com](http://www.veritext.com).

# EXHIBIT 8





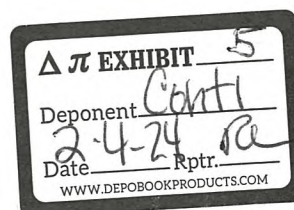
**Data Disclosure Policy:**  
**Legal Proceedings and Government Investigations**

Introduction. IQVIA market research offerings are highly valuable and proprietary resources, built over decades of careful design, significant capital investments, and the expertise of many thousands of employees. To retain the value of these offerings, the licenses IQVIA grants to its clients generally allow only internal use of IQVIA market research data. However, IQVIA acknowledges and understands that clients may have a need for limited external disclosure of some IQVIA Data.

One of these circumstances relates to disclosures of IQVIA Data in Legal Proceedings and Government Investigations. This Data Disclosure Policy is intended to advise IQVIA clients and IQVIA personnel of the conditions under which IQVIA may grant consent for the limited disclosure of IQVIA Data in Legal Proceedings and Government Investigations.

Definitions.

- ***IQVIA Data.*** Any syndicated IQVIA data licensed by IQVIA to a client, including information derived from that IQVIA data. IQVIA Data includes information from national market research audits; subnational information services; reference data relating to healthcare professionals, healthcare organizations, medicines or other healthcare related products; and real world data (e.g., data from electronic medical records, longitudinal prescription data, claims data).
- ***Legal Proceeding.*** Any lawsuit, hearing, or other proceeding between two or more adverse parties heard and determined by a court, tribunal or other judicial, arbitration, mediation or government authority, including any filings made in connection with such proceeding.
- ***Government Investigation.*** Any government investigation or inquiry involving requests for IQVIA Data (e.g., through a subpoena, investigative demand, summons, etc.). If such proceeding has been filed in a court or other tribunal, it is considered a Legal Proceeding.
- ***Protective Order.*** A court ordered document that protects and limits the disclosure of confidential and proprietary information in Legal Proceedings. A sufficient Protective Order restricts disclosure of the IQVIA Data only to a limited group of individuals or entities that reasonably needs access to such information, extends confidentiality protections to third party information that is produced by a party to the Legal Proceeding,





and allows recipients of the IQVIA Data to use such information only for the purposes of the Legal Proceeding.

- *Confidentiality Mechanism*: A document, agreement, statute or other mechanism that protects and limits disclosure of confidential and proprietary IQVIA Data in Legal Proceedings or Government Investigations.

Scope. Clients who are in possession of IQVIA Data, current and/or historical, may have a need to disclose confidential and proprietary IQVIA Data in Legal Proceedings or Government Investigations. Client licenses of IQVIA Data permit only internal use. Accordingly, any external or other disclosure of IQVIA Data requires IQVIA's prior written consent.

- Disclosure of IQVIA Data in Legal Proceedings and Government Investigations requires an IQVIA consent letter to be executed by the client or its legal representative agreeing to certain terms and conditions protecting IQVIA Data in the proceedings (discussed below).
- To the extent the client would like to disclose IQVIA Data to a retained expert or consultant solely for internal analysis, and no Protective Order or other Confidentiality Mechanism exists, the client may seek a Third Party Access (TPA) Limited License Agreement ("TPA License") from IQVIA. The IQVIA client must submit the request using the TPA Program portal. Any disclosure or use beyond the internal analysis in any Legal or Government Proceeding is not permitted under the TPA and requires written consent from IQVIA pursuant to this policy.
- To the extent the client's request falls outside the scope of the above, please reach out to your client representative and the IQVIA Global Legal Department.

#### Terms and Conditions for Obtaining IQVIA Consent.

- Consent for the disclosure of IQVIA Data in Legal Proceedings and Government Investigations may only be granted where IQVIA has determined that its confidential and proprietary information will be sufficiently protected from unnecessary and unlimited disclosure.
  - In Legal Proceedings in the United States, consent for the disclosure of IQVIA Data will be permitted pursuant to a fully executed Protective Order.
  - In other jurisdictions and in Government Investigations, consent for the disclosure of IQVIA Data will only be permitted under a sufficient Confidentiality Mechanism.





- Some offerings may have additional approval requirements, such as any data offering that utilizes prescriber-level data.
- In addition, consent may only be granted where a client or its legal representative agrees to certain other terms and conditions necessary to protect IQVIA's proprietary and confidential interests, including but not limited to:
  - The IQVIA Data will only be used for purposes directly related to the Legal Proceeding or Government Investigation.
  - The IQVIA Data will be marked at the highest level of confidentiality available under the Protective Order or Confidentiality Mechanism.
  - The client will notify and cooperate with IQVIA in maintaining the confidentiality of the IQVIA Data and protecting the IQVIA Data from any public disclosure.
  - The client acknowledges that IQVIA is not agreeing to (1) serve as an expert on behalf of any party; (2) prepare or offer any testimony, affidavits, declarations or other evidence regarding the interpretation of the IQVIA Data or the services performed by IQVIA; (3) provide any advice or engage in any advocacy with respect to witness testimony or expert analysis of any party; or (4) provide any opinion as to the relative merits of any party's position in the Legal Proceeding or Government Investigation.
  - The IQVIA Data used by a client representative in preparing exhibits or other documents to be introduced in a Legal Proceeding or Government Investigation will be extracted and presented accurately and correctly sourced (i.e. correct universes and measures are used for the claim required and that the data is used in accordance with applicable laws and in the country/ies where they are permitted to be used), will not be used in a misleading way, and shall not be represented as a report, document, or exhibit prepared or endorsed by IQVIA.
  - IQVIA will be held harmless from any claims or costs arising from or relating to the use of the IQVIA Data in connection with the Legal Proceeding or Government Investigation.

Important Disclosure. While clients may often be required to produce IQVIA Data in Legal Proceedings and Government Investigations, it should be advised that IQVIA Data may reflect projections, estimates, and forecasts that are the result of a combination of confidential and proprietary technologies, statistical methodologies and a significant number of sources. These estimates reflect the independent judgment, expertise and opinion of IQVIA representatives to arrive at a reasonable approximation of market activity. The IQVIA Data is intended to support sales, marketing and research applications, and it is highly reliable for those purposes. The IQVIA Data, although appropriate for its intended purpose of supporting business and marketing analyses in industries such as the pharmaceutical industry, contains data that is susceptible to error or variance, and is not intended to be used as direct evidence or to establish any fact.



Accordingly, IQVIA offers no assurances that the IQVIA Data will be suitable for use as evidence in any Legal Proceeding or Government Investigation. For more information regarding this topic, please see the latest IQVIA Information Services Published Specifications.

What is Not Covered by This Policy. This Policy does not cover purchases of IQVIA Data for use in Legal Proceedings or Government Investigations, or any other types of disclosures of IQVIA Data. Please contact your account representative for such purchases.

Changes to This Policy. IQVIA reserves the right to modify this Policy at any time.

# **EXHIBIT 10**





## **IQVIA Information Services Published Specifications**

(January 2018)

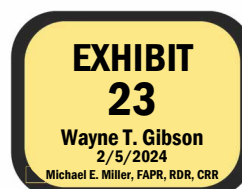
### **Introduction**

IQVIA is a leading provider of information and technology services for the healthcare industry, covering markets in 100+ countries around the world. A leader for more than 60 years, we blend industry expertise and advanced technology to deliver in-depth analytics on healthcare dynamics. We have one of the largest and most comprehensive collections of healthcare information in the world, spanning sales, prescription and promotional data, medical claims, electronic medical records and social media. We continuously innovate to keep pace with a global healthcare environment that is highly dynamic and increasingly complex and interdependent.

IQVIA information services represent a wide array of offerings reporting on various aspects of medicines and health care in countries around the world. In market research and other methods of estimating activity in the world, numbers are prepared using judgment and skill, not simply arithmetic. Further, information is initially input at the source by thousands of people, often manually, in thousands of organizations. Further still, this information is often gathered from IT systems that were designed for and serve a purpose other than measuring market activity (e.g., electronic medical records, pharmacy systems, payment systems), so the design of the data fields and the choices available to populate those fields are not intended to meet the needs of IQVIA's clients. Each of these characteristics of the underlying components of market measures has an impact on the ultimate accuracy and meaning of the final numbers.

Although there is an inclination to view numerical data as fact, IQVIA information represents an estimate of measured activity and should be treated accordingly. To use it effectively, it is important to have a sufficient understanding of how the information is sourced, processed, standardized, produced and reported. Further, proper practice involves the use of IQVIA information in combination with other information (e.g., knowledge based on skills and experience, other information and observations in the marketplace) to make decisions. To help customers obtain the most value from IQVIA information services and use the information in a manner that is consistent with its specifications, this document provides an overview of the processes employed by IQVIA to produce and report these estimates, and a list of appropriate practices in the use of such information.

We prepared this document to help you use IQVIA information services more effectively. This document provides an overview of methods we employ to source, collect, cleanse, bridge, edit and organize information. We then apply some combination of sophisticated computer processing, statistical projections, advanced analytics, forecasting methodologies and our skills and experience to provide you with answers, insights and tools. We don't use every method described in this document in every one of our hundreds of offerings; we use commercially reasonable efforts to employ many of these in each of our offerings commensurate with the nature and cost of the service in order to provide our customers with the most comprehensive and effective measures of pharmaceutical and health care markets in the world.





## **IQVIA Processes**

### Data Sourcing

IQVIA collects information from a wide variety of sources. Some of that information is collected through surveys, which may be completed by respondents as the activity occurs or completed later based on review of records or an individual's recollection, and which may be completed by the person engaged in the activity (e.g., provider) or someone else at their location (e.g., nurse, technician, administrative staff). Other information may be gathered from business records based upon fields of information that an organization is willing to provide, with the information gathered as a by-product of the business process which produces it (i.e., health records and payment systems are designed for a particular purpose, so data collection for other purposes is a secondary use of the information). Although IQVIA seeks accurate, complete and timely information from these sources, the information is frequently provided with limited assurances regarding quality and timeliness. In addition, IQVIA frequently uses pre-defined formats for responses, financial incentives, feedback reports, notification requirements for changes in data or systems, retention of back-up copies of data at the source, record layouts, contractual undertakings to avoid the blocking of data at the request of others and other approaches to encourage the delivery of high quality and timely data provided by these sources, commensurate with the nature of the data collection activity (e.g., approaches appropriate for a physician completing a monthly market research survey versus a large commercial organization providing gigabytes of transactional information on a daily basis).

### Data Receipt

IQVIA takes care to establish reasonable methods of delivery for information from hundreds of thousands of sources to support the timely and secure delivery of data to IQVIA. Following receipt of data from its sources, IQVIA employs a variety of initial quality control checks and processes to ensure data has been properly delivered to IQVIA. IQVIA also contacts sources if data is not received on a timely, complete or accurate basis as a result of these initial quality control checks (to the extent detectable). Data record statistics (e.g., record counts) accompany data delivery to ensure data shipment records match data receipt records. Further, IQVIA maintains various metrics and parameters regarding the characteristics of each individual data file received and promptly investigates discrepancies or unusual variances identified through its automated quality control processes. Data suppliers are frequently contacted to assist with resolution of these issues. IQVIA promptly performs manual adjustments to data based on acknowledgement by supplier of file issues, allowing for prompt correction of many issues prior to the start of database creation and the report production schedule. IQVIA maintains readily available back-up copies of incoming data sets in conjunction with report production in the event data processing issues are identified, providing IQVIA with the ability to rapidly re-process data.

### Data Editing / Validation

In addition to the processes referenced above, IQVIA has invested significantly in the development of proprietary data cleansing, editing, and other sophisticated tools to find data issues and provide visibility to any issues as they become apparent. The benefit for IQVIA clients is our ability to proactively identify situations that may exceed standard variances. Although these quality control checks and processes will vary by data type, examples include: (a) examination of the information in various fields for each transaction to ensure the field contains a valid value, (b) maintenance of various metrics and established variances regarding the characteristics of each transaction (e.g., days' supply of product, quantity by product), (c) maintenance of various metrics and established



variances regarding the characteristics of the source, (d) analysis of historical distribution, prescribing, dispensing or other applicable patterns of measured activity, and (e) analysis of historical reporting patterns. If unusual variances are encountered, IQVIA investigates the situation or takes other appropriate actions, often working closely with the sources of the data to determine if the variances are acceptable or require corrections. Data exceeding acceptable variance ranges will not be utilized unless verified. Despite all these processes and procedures to capture data quality errors upon receipt, it is impossible to capture all errors that might exist within the boundaries of the acceptable variance levels and therefore can be a source of variability within IQVIA information.

#### Reference Files

To standardize data received from a wide variety of sources and allow for alignment of the data prior to projection or aggregation, IQVIA develops and maintains reference files for various types of information, including medicines, diagnoses, treatment modalities, distribution centers, health care offices, integrated health networks, insurance plans and data classification schemes. IQVIA employs a number of processes to maintain the quality of these reference files, including: (a) acquisition and integration of a significant number of reference file updates received from a variety of sources, (b) manual data validation to confirm the existence and accuracy of the reference information, (c) maintenance of linkages between IQVIA standard identifiers and industry standard identifiers, and (d) investigations of reported data discrepancies.

#### Data Quality Bridging

IQVIA receives data relating to tens of millions of transactions each week. To standardize data for each transaction received from a wide variety of sources (e.g., suppliers frequently use their own proprietary reference numbers) and allow for alignment of the data prior to projection or aggregation, IQVIA links key record variables to IQVIA standard reference files as applicable for the particular service. As changes occur in the marketplace (e.g., new product or a new form, pack or strength of an existing product), and these changes are reported to IQVIA, IQVIA works quickly to map these changes in data arriving from sources to IQVIA's standard reference files. IQVIA employs a number of processes to maintain the quality and results of the bridging process, including: (a) development and maintenance of algorithms for the matching / linking of supplier reference numbers with IQVIA reference files, (b) identification of new, deleted or modified supplier reference numbers for purposes of promptly linking these to IQVIA reference files, and (c) annual bridge validation for key products.

#### Database Management

When data has successfully passed through the processes referenced above, it is then added to the applicable IQVIA database. In connection with the movement of the information to these databases, IQVIA employs additional quality control processes, including: (a) IQVIA examines the data to ensure data file statistics match as data moves from one process to another process (e.g., number of records), and (b) all programming logic, statistical methodologies and other computer algorithms applied to the data to create these databases and the applicable reports pass through rigorous development and testing methodologies prior to implementation in the production environment.

#### Projection Methodologies

Most IQVIA offerings are derived from the use of statistically representative samples, not a census of activity. More than one hundred statisticians support the development of sample designs and projection methodologies to estimate activities to achieve a high degree of accuracy on a cost effective basis. IQVIA frequently employs higher coverage rates than statistically necessary for many of its offerings to properly reflect key aspects of the pharmaceutical and health care markets.



Nevertheless, sample designs, projection methodologies and coverage rates all have an impact on the degree of accuracy of IQVIA information. Information regarding confidence intervals and other measures of accuracy are available to IQVIA customers.

#### Imputation Methodologies & Temporary Replacement Data

On occasion, IQVIA employs data imputation methodologies that allow IQVIA for a short period of time to impute data for a supplier or facility location if data supply is interrupted or severe data quality issues are uncovered. By using imputation methodologies for missing data, analysis has shown that IQVIA offerings are more accurate and not prone to trending spikes caused by issues in the data flow process (i.e. enabling analysis of true trends based on marketplace activities).

#### Client Report Creation

Certain IQVIA reports involve customization based on customer supplied report parameters (e.g., market definitions and geographic reporting specifications). IQVIA employs methods to verify the customer supplied parameters and ensure these have been properly entered into IQVIA report production systems. These customized reports undergo validation procedures in an effort to ensure these parameters have been applied correctly.

#### Data Availability

IQVIA provides the most comprehensive set of market measures in the world. However, numerous factors can potentially impact the acquisition and/or usability of such information, including: (a) contractual restrictions from sources of data on the use, types of customers, applications and publication of information, (b) legal restrictions, (c) data origination (e.g., data entry errors; system coding issues), (d) data suppliers (e.g., variations in processing), (e) market events, and (f) natural disasters. IQVIA works hard to avoid data variability in these circumstances and find reasonable solutions to account for the impact of these issues on IQVIA information.

### **Appropriate Uses of IQVIA Information**

Applications using IQVIA information should be designed to accommodate the unique characteristics of the information. As noted above, there are a multitude of people, sources, systems, laws, methodologies and other issues that can impact the quality and nature of this information. Users of IQVIA information should design applications that leverage strengths and minimize weaknesses of such information to avoid application errors or flawed decision-making. These design considerations include:

- Use confidence intervals: Confidence intervals are expressed in terms of a range of values around the sample-based estimate associated with a particular probability, or level of confidence, that the true value is contained within that range.
- Account for normal variations in trends over historic periods of time: Incorporate tolerance ranges into analysis to identify data points which fall outside of normal variations. Look for industry events or other known causes which might account for the unexpected deviation. Examples might include significant weather events, product manufacturing issues affecting inventory, etc.
- Use similar historic periods when using data: Apply historical trends in tandem when viewing market share for a reasonability test (e.g., holiday periods, seasonality).



- Manage expectations: Set expectations within your organization and with your vendors so normal variation is understood to avoid incorrect decision-making, poorly designed applications or a loss of confidence in IQVIA information.
- Vendor selection: Be sure each of your vendors working with IQVIA data understands the related healthcare markets and the underlying characteristics associated with the data.
- Anticipate greater variability for low volume or more granular estimates: Recognize that using data on low volume products or extracting data of increasing granularity (e.g. smaller groups of prescribers or smaller geographic areas) increases the variability of the data estimations.
- Market share versus volume: Use market share for more consistency than volume. While individual product volume estimations are desirable to report product sales trends, those estimations are subject to the variability noted in this document. By viewing product trends in the context of an entire market (market shares), whereby each product is estimated with a similar degree of variability, the resulting calculations may improve the overall consistency of the market measure.

### **Summary**

IQVIA information is gathered from a wide variety of data sources using many different methods. The data are complex, non-standard, and can be inherently variable when submitted to IQVIA. We use sophisticated tools and business practices to gather, validate, standardize, project, and report such information. As such, IQVIA information represents an estimate of measured activity and should be treated accordingly. We encourage customers to apply the considerations provided above, and to use the tools and guidance materials provided from IQVIA in order to use IQVIA information effectively.



# **EXHIBIT 12**

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**In re Novartis and Par Antitrust Litigation**

**1:18-cv-04361-AKH**

**This Document Relates To:**

**All Actions**

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION  
TO EXCLUDE THE TESTIMONY OF DR. RENA CONTI**

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## **I. INTRODUCTION**

Plaintiffs seek to rely on expert testimony from economist Dr. Rena Conti, who opines on the purported injury to the putative end-payor (“EPP”) class. Dr. Conti’s methodology, however, suffers from two critical flaws, each of which provides an independent basis for exclusion. First, Dr. Conti’s analysis fails to accurately identify the consumers and third-party payors (“TPPs”) that paid for brand or generic Exforge prescriptions in the specific jurisdictions that are included within the putative EPP class, while accounting for those jurisdictions that are excluded from the putative EPP class. Second, Dr. Conti’s analysis fails to reliably determine how much TPPs (such as insurance companies) paid for the prescriptions at issue, a necessary predicate to calculating an accurate overcharge estimate.

## **II. BACKGROUND**

The putative EPP class is comprised of two types of indirect purchasers: (i) consumers, who are individual purchasers of brand or generic Exforge, and (ii) TPPs, which include entities such as health plans and insurers that reimbursed some or all of the prescription price on behalf of their members or insureds. Ex. A, Conti Rpt. ¶ 14.<sup>1</sup> The putative EPP class is limited to those consumers or TPPs who made their brand or generic Exforge purchases in one of 22 jurisdictions.<sup>2</sup> *Id.* As the Court may recall, while the EPPs’ complaint initially sought to include 48 jurisdictions within the putative class,

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<sup>1</sup> Exhibits filed herewith are attached to the Declaration of Rachel G. Skaistis.

<sup>2</sup> These 22 jurisdictions are: the District of Columbia, Arizona, California, Florida, Hawaii, Iowa, Maine, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Utah, Vermont, West Virginia, and Wisconsin. *Id.*



that number was reduced to 22 in the Court’s rulings on the motion to dismiss. *See* Opinion and Order Granting Defs. Partial Mot. to Dismiss, ECF No. 193, at 17-19. Since that time, EPPs have not contested that the jurisdictions within their putative class are limited to those 22. As such, calculating a reliable damages estimate requires accurately identifying the operative jurisdiction for purposes of each prescription during the relevant period, as well as assessing the extent to which the indirect purchasers of those prescriptions were allegedly injured—*i.e.*, whether and how much less they would have paid absent the challenged conduct.

Dr. Conti seeks to make both determinations using a dataset her consulting firm purchased from a third party, IQVIA; the dataset is called Xponent, and it attempts to capture retail sales information for about 92 percent of all prescriptions in the country. Ex. A, Conti Rpt. ¶ 91; Ex. D, Craft Rpt. ¶ 42. The Xponent data include a “STATE” field, which Dr. Conti uses to determine which jurisdiction was the operative jurisdiction for each prescription. Ex. C, Conti Dep. Tr. at 188:2-20. The data also list an amount of monthly pharmacy reimbursement by medication, which Dr. Conti uses to determine an average, monthly per-prescription price to calculate her overcharge estimate. Ex. A, Conti Rpt. ¶ 93. For purposes of her opinions, Dr. Conti was instructed by Plaintiffs’ counsel that “antitrust injury occurs at the moment of purchase”, *id.* ¶ 116, and interpreted the Xponent data as providing information relevant to that moment for assessing injury to both consumers and TPPs in the putative EPP class.<sup>3</sup> After applying

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<sup>3</sup> *See* Ex. C, Conti Dep. Tr. at 188:2-20 (“Q: What is the operative location for assessing which reimbursements are in the putative class? . . . A: Injury occurs at the point of sale, and therefore it’s the point -- it’s the place where the consumer receives the dispensed prescription. Q: And to make the determination of where the consumer received the dispensed prescription, you used the state field in the Xponent data; right?”

this methodology, Dr. Conti concluded that antitrust injury can be shown using common proof, that overcharges can be reliably calculated on a class-wide basis, and that overcharges to the putative EPP class are between \$94 and \$130 million. Ex. A, Conti Rpt. ¶ 4.

Notably, on January 3, 2022—nearly a month after her deposition and following the close of expert discovery—Dr. Conti submitted a so-called “Second Errata,” in which she admitted, for the first time, that her understanding of the “STATE” field in the Xponent data had been incorrect. Ex. B, Conti Second Errata ¶¶ 5-6. Specifically, Dr. Conti explained that on December 9, 2021—three days after her deposition—she learned that the “STATE” field “reflects the *prescriber’s* location the vast majority of times,” not the moment of purchase. *Id.* ¶ 5 (emphasis added). Notwithstanding this fundamental misunderstanding of the data, Dr. Conti went on to state that her “conclusions and opinions remain the same.” *Id.* ¶¶ 5-6.

### III. ARGUMENT

Dr. Conti’s analyses rely on a flawed understanding of the Xponent data and result in an unreliable definition of the putative EPP class and overcharge estimate. Her opinions should therefore be excluded. Fed. R. Evid. 702(c) (expert testimony is only admissible if “the testimony is the product of reliable principles and methods”); *Amorgianos v. Nat’l R.R. Passenger Corp.*, 303 F.3d 256, 267 (2d Cir. 2002) (expert testimony must be reliable at every step: “any step that renders the analysis unreliable . . . renders the expert’s testimony inadmissible”).

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A: Yes, which reflects the -- for retail pharmacies, it reflects the location of the pharmacy, as I understand it.”).

**A. Dr. Conti's Methodology For Identifying Members of the Putative Class is Unreliable**

In her expert report, and throughout her deposition, Dr. Conti asserted, without reason or explanation, that antitrust injury occurs at the “point of sale,” which she assumes is the location of the pharmacy (for retail purchases) or the consumer’s residence (for mail order purchases). *See, e.g.*, Ex. A, Conti Rpt. ¶ 116; Ex. C, Conti Dep. Tr. at 188:11-20.<sup>4</sup> She further testified that she relied upon the “STATE” field in the Xponent data to identify this geographical point of sale for purposes of her opinions. Ex. C, Conti Dep. Tr. at 192:16-23. Setting aside whether the pharmacy location or consumer’s home address provide the correct metric for determining point of sale (particularly for the purpose of assessing antitrust injury for a TPP who may be hundreds or thousands of miles away from the pharmacy and consumer), the IQVIA data on which Dr. Conti relies does not provide that information. Instead, as Dr. Conti now admits, the “STATE” field in the dataset on which she relied reports on the location of the *prescribing physician*. *See* Ex. B, Conti Second Errata ¶ 5. This error calls into question all of Dr. Conti’s opinions because it undermines her application of the IQVIA data.

First, there is no logical basis for suggesting that the point in time at which a consumer or TPP is allegedly injured occurs when a doctor writes a prescription for branded or generic Exforge. Neither money nor medication changes hands at that moment. Moreover, many prescriptions that are written are never filled.

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<sup>4</sup> *See also* Ex. C, Conti Dep. Tr. at 201:13-19 (“A: Okay. Just common sense for a second, please. If I'm a consumer, I walk into a pharmacy and I am given a prescription drug from the pharmacist, that is the point of sale. It is exactly that definition of the point of sale that I am applying in assessing injury and damages in this calculation.”).

Second, using the prescribing physician's location for determining class membership would be improper in instances, for example, where a consumer visited a physician in a jurisdiction other than where he or she filled a prescription, or where a TPP paid a pharmacy for a prescription in a jurisdiction other than where the medication was prescribed. For instance, Dr. Conti's approach would count as an EPP class member a consumer who visited a physician in the District of Columbia (included in the putative class definition) but filled that prescription in Maryland or Virginia (both excluded from the putative class definition). It would also count as an EPP class member an insurer based in Washington (excluded from the putative class definition) who paid for all or part of a prescription that was written in New York (included in the putative class definition), even if the insurer's payment for that prescription was made to a pharmacy in New Jersey or Connecticut (both excluded from the putative class definition).

Thus, the data Dr. Conti relies upon is insufficient to support her analysis. *See Amorgianos*, 303 F.3d at 266 (“[W]hen an expert opinion is based on data, a methodology, or studies that are simply inadequate to support the conclusions reached, *Daubert* and Rule 702 mandate the exclusion of that unreliable opinion testimony”); *General Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) (expert opinion should be excluded when “there is simply too great an analytical gap between the data and the opinion proffered” (internal quotation marks omitted)).

Dr. Conti now attempts to rehabilitate her testimony—after her deposition and the conclusion of expert discovery—by stating that her error has no impact on the conclusions and opinions set forth in her report. Ex. B, Conti Second Errata ¶ 6. This untimely opinion lacks foundation and should also be excluded. Indeed, Dr. Conti's

revised opinion is based solely on conclusory statements that “people seek medical care within a short distance of their residence,” and “prescriber state, pharmacy state, and the patient state are highly concordant.” *Id.* ¶ 6. Dr. Conti—who does not claim any expertise in such matters—has not put forward any methodology, much less a reliable one, to make those determinations. They should be excluded as a result. *Pacific Life Ins. Co. v. Bank of New York Mellon*, 2021 WL 5299193, at \*3 (S.D.N.Y. Nov. 15, 2021) (“Rule 702 requires that expert testimony rest on knowledge, a term that connotes more than subjective belief or unsupported speculation.” (internal quotation marks omitted)).

**B. Dr. Conti’s Methodology For Calculating Overcharges to the Putative Class Is Unreliable**

Dr. Conti’s opinions should also be excluded because her methodology cannot reliably capture amounts paid for Exforge and its generic equivalents by the TPP members of the putative class. The Xponent data Dr. Conti uses to calculate overcharges attempt to capture the amounts paid to pharmacies for Exforge prescriptions.<sup>5</sup> Dr. Conti acknowledges, however, that many TPPs use pharmacy benefit managers (“PBMs”)—who were intentionally excluded from the definition of the putative EPP class<sup>6</sup>—to execute their pharmaceutical purchasing, and so they reimburse the PBMs, not the pharmacies, for their members’ prescriptions. *See* Ex. A, Conti Rpt. ¶¶ 171-173. [REDACTED]

[REDACTED]

[REDACTED]

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<sup>5</sup> *See, e.g.*, Ex. C, Conti Dep. Tr. at 175:5-10 (“Q: You mentioned that the Xponent data that you used for your analysis is -- reflects the payment to the pharmacy for the pharmaceutical product; right? A: Correct. It is the point of sale purchase price.”).

<sup>6</sup> End-Payor Plaintiffs’ Consolidated Amended Complaint, ECF No. 25, ¶ 174(i).



[REDACTED]  
[REDACTED]  
[REDACTED] See, e.g., Ex. F, UFCW LOCAL 1500-  
EXFG-000536–66 at -43.

Dr. Conti conceded at her deposition that in instances where it is a PBM that pays the pharmacies for Exforge prescriptions—rather than TPPs themselves—the “reimbursement” by the TPP to the PBM for a given prescription (which the TPP seeks to recover as alleged damages in this case) could be different than what is received by the pharmacy and ultimately reflected in the Xponent data for that sale. Ex. C, Conti Dep. Tr. at 166:22-167:3. This disparity could be, for example, a function of “spread pricing,” whereby a TPP agrees to pay the PBM more for prescriptions than the PBM pays the pharmacy. Ex. A, Conti Rpt. ¶ 173. Or the disparity could be, for example, the result of the PBM failing to meet contracted rebate or pricing guarantees to the TPP that require the PBM to take a loss on a given prescription.<sup>7</sup> In either case, there is no basis to assume that the amount received by the pharmacy, as reflected in the Xponent data, is the proper metric to determine overcharges—that could allocate “damages” to TPPs that suffered no harm at all, or whose alleged harm is considerably overstated.

Dr. Conti has not investigated the extent to which there may be differences between the amounts TPPs in the putative class paid PBMs for Exforge and generic

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<sup>7</sup> Ex. E, Rogers Dep. Tr. at 76:20 – 77:5 (“[Q:] We talked earlier about the possibility that there could be instances in which the rebates paid out to a client under rebate guarantees exceed the rebates received by Optum from the manufacturer on specific prescriptions right? A: That is a possibility, yes. Q: In those instances, does Optum take a net loss on that particular prescription? . . . [A:] In the – in the aggregate, we could calculate a loss.”).

Exforge prescriptions and the pharmacy reimbursements for those prescriptions included in the Xponent data on which she relies.<sup>8</sup> Dr. Conti also has not assessed, and has no basis to assume, whether any such payments by TPPs to PBMs were made in the same jurisdiction as the prescribers of the Exforge and generic Exforge prescriptions to which they are tied, which is the only geographical information Dr. Conti can draw from the Xponent data to determine which TPPs should be included in the putative class. *See* Ex. B, Conti Second Errata ¶ 5. This incomplete analysis is insufficient to meet the demanding reliability requirements of Rule 702. *See Weiner v. Snapple Beverage Corp.*, No. 07 CIV. 8742 DLC, 2010 WL 3119452, at \*7 (S.D.N.Y. Aug. 5, 2010) (excluding expert report that provided “no details concerning the significant conceptual, implementation, or data issues that would be encountered if his [approach] were adopted”); *R.F.M.A.S., Inc. v. So*, 748 F. Supp. 2d 244, 274 (S.D.N.Y. 2010) (“The minimal data that [the experts] relied upon . . . provide ample reason to exclude their testimony on damages.”)

#### IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court exclude the testimony of Dr. Rena Conti in its entirety.

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<sup>8</sup> Ex. C, Conti Dep. Tr. at 175:11-176:5 (“Q: So in instances where there's a difference between the payment to the pharmacy and the payment from the third-party payer to the PBM for a given transaction, the Xponent data does not take into account that difference; correct? [A:] . . . There might be these additional adjudications, but I think that they're out of my calculation, certainly.”).

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Respectfully submitted,

/s/ Rachel G. Skaistis

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